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

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2424

Negotiability Proceedings

Corrections

In Rule Document 2023–19269, appearing on pages 62445 through 62460 in the issue of Tuesday, September 12, 2023, make the following corrections:

§ 2424.2 [Corrected]

- 1. Beginning on page 62455, in the third column, amendatory instruction 3 is corrected to read as follows:
- 3. Amend § 2424.2 by revising paragraphs (a), (c)(2) and (c)(3), adding paragraphs (c)(4) through (7), and revising paragraphs (e) and (f). The revisions and additions read as follows:

§ 2424.11 [Corrected]

- 2. On page 62456, in the second column, in the third line from the bottom, “© *Unrequested agency allegation.*” should read “(c) *Unrequested agency allegation.*”

§ 2424.22 [Corrected]

- 3. On the same page, in the third column, in the fifth line from the bottom, “I *Content.*” should read, “(c) *Content.*”

§ 2424.23 [Corrected]

- 4. On page 62457, in the second column, in the twenty-seventh and twenty-eighth lines, “€ *Discretionary extension of time limits.*” should read, “(c) *Discretionary extension of time limits.*”

§ 2424.24 [Corrected]

- 5. On page the page, in the third column, in the fourth line, “I *Content.*” should read, “(c) *Content.*”

§ 2424.25 [Corrected]

- 6. On page 62458, in the first column, in the twenty-fourth line from the

bottom, “I *Content.*” should read, “(c) *Content.*”

§ 2424.31 [Corrected]

- 7. On page 62459, in the second column, amendatory instruction 14 is corrected to read as follows:

- 14. Amend § 2424.31 by revising the heading, introductory text, and paragraph (c) to read as follows:

§ 2424.32 [Corrected]

- 8. On page the same page, in the third column, beginning on the ninth line, (2) and (e) are corrected to read as set forth below:

(2) Failure to respond to an argument or assertion raised by the other party may, in the Authority’s discretion, be treated as conceding such argument or assertion.

(e) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (d) of this section, take any other action that, in the Authority’s discretion, it deems appropriate, including dismissal of the petition for review (with or without prejudice to the exclusive representative’s refiling of the petition for review), and granting the petition for review and directing bargaining or rescission of an agency head disapproval under 5 U.S.C. 7114(c) (with or without conditions).

§ 2424.40 [Corrected]

- 9. On same page, in the same column, in the sixth line from the bottom, “(d) *Cases involving provisions.*” should read, “(c) *Cases involving provisions.*”

[FR Doc. C1–2023–19269 Filed 10–5–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–SC–22–0094]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Olive Committee (Committee) to increase the assessment rate established for the 2023 fiscal year and subsequent fiscal years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective November 9, 2023.

FOR FURTHER INFORMATION CONTACT:

Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: Jeremy.Sasselli@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 referred to as the “Order” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee administers the Order and is comprised of producers and handlers of olives operating within the area of production and may have one public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies

to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 updates and modernizes Executive Order 12866 and directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate established herein will be applicable to all assessable olives beginning on January 1, 2023, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on

the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of AMS, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area, and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from \$16 per ton of assessed olives, the rate that was established for the 2022 and subsequent fiscal years, to \$35 per ton of assessed olives for the 2023 and subsequent fiscal years. The higher rate is the result of the significantly lower crop size in 2022 (fruit that is marketed over the course of the 2023 fiscal year) and the need to maintain the Committee's financial reserve.

The Committee met on December 13, 2022, and unanimously recommended 2023 fiscal year expenditures of \$1,154,412 and an assessment rate of \$35 per ton of assessed olives. In comparison, last year's budgeted expenditures were \$1,245,085. The assessment rate of \$35 is \$19 higher than the rate currently in effect. Producer receipts show a yield of 19,912 tons of assessable olives from the 2022 crop year, which is substantially less than the quantity of olives harvested in the 2021 crop year, in which 46,359 tons of assessable olives were produced.

Olives harvested in 2022 will be marketed over the course of the 2023 fiscal year, which begins on January 1, 2023. The 19,912 tons of assessable olives from the 2022 crop should generate \$696,920 in assessment revenue at the \$35 per ton assessment rate. The balance of funds needed to cover budgeted expenditures will come from interest income, Federal grants, and the Committee's financial reserve. The 2023 fiscal year assessment rate increase is appropriate to ensure the Committee has sufficient revenue to fund the recommended 2023 fiscal year budgeted expenditures. Funds in the reserve are expected to remain within the Order's requirement of no more than approximately one fiscal year's budgeted expenses.

The Order has a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and

ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31 of each year. Olives are an alternate-bearing crop, with a large crop (2021) followed by a small crop (2022). For this assessment rate rule, the actual 2022 crop year receipts are used to determine the assessment rate for the 2023 fiscal year.

The major expenditures recommended by the Committee for the 2023 fiscal year include \$547,700 for program administration, \$193,000 for marketing activities, \$325,712 for research, and \$88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were \$538,700; \$284,000; \$379,485; and \$42,900, respectively.

The assessment rate recommended by the Committee resulted from consideration of anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2022 crop year, and the amount in the Committee's financial reserve. Income derived from handler assessments and other revenue sources is expected to be adequate to cover budgeted expenses. The assessment rate established in this rulemaking will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal years will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of

businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers of olives are defined by the Small Business Administration (SBA) as those having annual olive receipts of less than \$3.5 million (NAICS code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms are defined as those whose annual receipts are less than \$34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Because of the large year-to-year variation in California olive production, it is helpful to use two-year averages of seasonal average grower price when undertaking calculations relating to average grower revenue. The National Agricultural Statistics Service (NASS) reported season average grower prices of olives utilized for canning for 2020 and 2021 of \$1,060 and \$1,110 per ton, respectively, with a two-year average price of \$1,085.

The appropriate quantities to consider are the annual assessable olive quantities, which were 19,912 tons in 2022 and 43,336 tons in 2021, with two-year average production of 31,624 tons. Multiplying 31,624 tons by the two-year average grower price of \$1,085 yields a two-year average crop value of \$34.312 million. Dividing the crop value by the number of olive producers (800) yields calculated annual average revenue per producer of \$42,890, much less than SBA's size standard of \$3.5 million. Thus, the majority of olive producers may be classified as small entities.

Dividing the \$34.312 million average crop value by 2 (the number of handlers) equals \$17.156 million, which is the annual average olive crop value processed by each of the 2 handlers over the two-year period. Subtracting \$17.156 million average crop value from the large handler size threshold of \$34 million yields a difference of \$16.844 million. Dividing the \$16.844 million difference by \$17.156 average crop value processed by each of the handlers yields an average manufacturing margin of 98 percent to be considered large handlers. A key question is whether 98 percent is a reasonable estimate of a manufacturing margin for the olive canning process.

A review of economic literature on canned food manufacturing margins found no recent published estimates. A series of Economic Research Service reports on cost components of farm to retail price spreads, published in the late 1970s and early 1980s, found that margins above crop value for a canned vegetable product were in the range of 76 to 85 percent. These margins are somewhat below the computed margin estimate of 98 percent to reach the \$34 million SBA threshold to be a large, canned olive handler. Although the studies are not recent, key observations are that canning technology has not changed significantly in that time period, but canning costs may have risen somewhat. Therefore, the conclusion to be drawn from these computations is that the two handlers are slightly below the large handler threshold of \$34 million in annual canned olive sales, using two-year average data, and assuming that the 2 handlers are about the same size.

In a large crop year, one or both handlers could be considered large handlers, depending on the proportion of the olive crop that each of the handlers processed. For example, the 2021 quantity of assessable olives was 43,336 tons, and half of that quantity was 21,668 tons. Multiplying that tonnage by the average grower price of \$1,085 per ton yields a crop value per handler estimate of \$23.51 million. To reach the \$34 million size threshold would mean canning costs of at least \$10.49 million, which would be a manufacturing margin of 45 percent (\$10.49/\$23.51)—well below the range of canning margins shown above.

The contrasting examples presented here show that in terms of canned olive sales, the processors can be viewed as either being above or below the SBA large handler size threshold, depending on the assumptions used in alternative calculations.

This final rule increases the assessment rate collected from handlers for the 2023 and subsequent fiscal years from \$16 to \$35 per ton of assessable olives. The Committee unanimously recommended 2023 expenditures of \$1,154,412 and an assessment rate of \$35 per ton. The increased assessment rate of \$35 is \$19 higher than the 2022 rate. The quantity of assessable olives harvested in the 2022 crop year was 19,912 tons, as compared to 46,359 tons in 2021. Olives are an alternate-bearing crop, with a large crop (2021) followed by a small crop (2022). Income derived from the \$35 per ton assessment rate, along with interest income, Federal grants, and funds from the authorized

reserve, should be adequate to meet this fiscal year's budgeted expenditures.

The Committee's financial reserve is projected to be sufficient to partially fund 2023 fiscal year budgeted expenditures and remain within the requirements of § 932.40(a)(2) of the Order. The major expenditures recommended by the Committee for the 2023 fiscal year include \$547,700 for program administration, \$193,000 for marketing activities, \$325,712 for research, and \$88,000 for inspection. Budgeted expenses for these items during the 2022 fiscal year were \$538,700; \$284,000; \$379,485; and \$42,900 respectively. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and decreased the budgeted expenses for research and marketing activities, while increasing the budget for administration and inspection program costs. Overall, the 2023 fiscal year budget of \$1,154,412 is \$90,673 less than the \$1,245,085 budgeted for the 2022 fiscal year.

Prior to arriving at the budget and recommended assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research Subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry and the decreased olive production. The assessment rate of \$35 per ton of assessable olives was derived by considering anticipated expenses, the relatively low volume of assessable olives, the current balance in the monetary reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021 crop year, the most recent crop year surveyed by NASS, was \$851 per ton. The quantity of assessable olives harvested during the 2022 crop year was 19,912 tons, which makes estimated total producer revenue \$16,945,112 (\$851 multiplied by 19,912 tons). Therefore, using the assessment rate of \$35 per ton, the assessment revenue for the 2023 fiscal year as a percentage of estimated total producer revenue is expected to be approximately 4.1 percent (\$35 multiplied by 19,912 tons divided by \$16,945,112 multiplied by 100).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by

the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The olive industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 13, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A proposed rule concerning this action was published in the **Federal Register** on June 16, 2023 (88 FR 39374). Copies of the proposed rule were also mailed or sent via email to California olive handlers. A copy of the proposed rule was made available through the internet by AMS via <https://www.regulations.gov>.

A 30-day comment period ending July 17, 2023, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be

sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 932 as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2023, an assessment rate of \$35.00 per ton is established for California olives.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–22332 Filed 10–6–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–SC–23–0006]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2023 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective November 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary

Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: DaleJ.Novotny@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. Part 956 referred to as the “Order” is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications.

AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable Walla Walla sweet onions for the 2023 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate for Walla Walla sweet onions handled under the Order from \$0.15 per 50-pound bag or equivalent, the rate that was established for the 2020 and subsequent fiscal periods, to \$0.20 per 50-pound bag or equivalent for the 2023 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate

of \$0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on December 5, 2022, and unanimously recommended 2023 fiscal period expenditures of \$70,400 and an assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2023 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were \$85,270. The proposed assessment rate of \$0.20 per 50-pound bag or equivalent is \$0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better fund operations using assessment revenue and reduce the reliance on reserve funds. The Committee has drawn down its financial reserve in recent years to cover Committee expenses and to reduce the reserve to not exceed approximately two fiscal periods' budgeted expenses, in conformance with the Order (7 CFR 956.44(a)). The Committee projects handler receipts of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions for the 2023 fiscal period, which is 16,150 50-pound bags or equivalent more than was projected for the 2022 fiscal period.

The major expenditures budgeted by the Committee for the 2023 fiscal period include \$43,400 for administrative expenses, \$17,000 for promotions, \$5,000 for research, and \$5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were \$43,400, \$31,870, \$5,000, and \$4,000, respectively.

Walla Walla sweet onions harvested in 2023 will be marketed mostly in the spring and summer of the 2023 fiscal period, which follows the calendar year. The expected 262,500 50-pound bags or equivalent of Walla Walla sweet onions from the 2023 crop will generate \$52,500 in assessment revenue at the increased assessment rate (262,500 50-pound bags or equivalent of Walla Walla sweet onions multiplied by \$0.20 assessment rate). The remaining \$17,900 needed to cover budgeted expenditures will come from reserve funds carried over from previous fiscal periods. The 2023 fiscal period assessment rate increase will be appropriate to ensure the Committee has sufficient revenue, along with its reserve, to fully fund its 2023 fiscal period budgeted expenditures and maintain a level of

reserve funds that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, an estimated 2023 crop volume of 262,500 50-pound bags or equivalent of assessable Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments (\$52,500) and funds from the Committee's authorized reserve (\$17,900) will be adequate to cover budgeted expenses (\$70,400).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken, as necessary. The Committee's 2023 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 15 producers of Walla Walla sweet onions in the production area and 11 handlers subject to regulation under the Order. Small agricultural producers of Walla Walla sweet onions are defined by the Small

Business Administration (SBA) as those having annual receipts of less than \$3,750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual producer price received for dry and fresh market onions sold in Washington between 2018 and 2021 ranged from \$9.13 to \$13.30 per hundredweight. The average over those years was approximately \$10.88 per hundredweight, or \$5.44 per 50-pound bag or equivalent. Total production of Walla Walla sweet onions for the 2022 season was reported by the Committee to be 299,993 50-pound bags or equivalent. Using the average price from 2018–2021, the most recent years for which there is NASS data, the total 2022 crop value of Walla Walla sweet onions could therefore be estimated to be \$1,631,962 (299,993 50-pound bags or equivalent multiplied by \$5.44 per 50-pounds). Dividing the crop value by the estimated number of producers (15) yields an estimated average receipt per producer of \$108,797, which is well below the SBA threshold for small producers.

In addition, according to USDA Market News data, the reported average 2021 terminal market price for Walla Walla sweet onions was \$35 per 40-pound carton. Multiplying this figure by 1.25 to adjust for a 50-pound bag or equivalent yields an average 2021 terminal market price of \$43.75 per 50-pound bag or equivalent. Multiplying the 2022 Walla Walla sweet onion production of 299,993 50-pound bags or equivalent by the estimated average price per 50-pound bag or equivalent of \$43.75 equals \$13,124,694. Dividing this figure by the 11 regulated handlers yields estimated average annual handler receipts of \$1,193,154 (\$13,124,694 divided by 11 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, all of the producers and handlers of Walla Walla sweet onions may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2023 and subsequent fiscal periods from \$0.15 to \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2023 fiscal period expenditures of \$70,400 and an assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions. The assessment rate of \$0.20 is \$.05 higher than the current rate. The Committee expects the industry to handle 262,500 50-pound bags or

equivalent of Walla Walla sweet onions during the 2023 fiscal period. Thus, the \$0.20 per 50-pound bag or equivalent rate will provide \$52,500 in assessment income (262,500 50-pound bags or equivalent multiplied by \$0.20). The Committee also expects to use \$17,900 from its financial reserve to cover remaining expenses. Income derived from handler assessments, along with reserve funds, will be adequate to meet budgeted expenditures for the 2023 fiscal period.

The major expenditures budgeted by the Committee for the 2023 fiscal period include \$43,400 for administrative expenses, \$17,000 for promotions, \$5,000 for research, and \$5,000 for Committee travel. Budgeted expenditures for the 2022 fiscal period were \$43,400, \$31,870, \$5,000 and \$4,000, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to better fund 2023 fiscal period budgeted expenditures and refrain from excessively drawing down the funds held in its reserve. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and the current assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.15 per 50-pound bag or equivalent and increasing the assessment rate by different amounts. The Committee determined that the recommended increased assessment rate will be able to fund most of the budgeted expenses and avoid drawing down reserves at an unsustainable rate. The assessment rate of \$0.20 per 50-pound bag or equivalent of Walla Walla sweet onions was derived by considering anticipated expenses, the projected volume of assessable Walla Walla sweet onions, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2018–21 fiscal period was \$5.44 per 50-pound bag or equivalent. Further, the Committee reported the quantity of assessable Walla Walla sweet onions harvested in the 2022 fiscal period was 299,993 50-pound bags or equivalent, which yields estimated total producer revenue for 2022 of \$1,631,962 (\$5.44 per 50-pound bag or equivalent multiplied by 299,993). Therefore, utilizing the assessment rate of \$0.20 per 50-pound bag or equivalent, assessment revenue for the 2022 fiscal

period, as a percentage of total producer revenue, will be approximately 3.68 percent (\$0.20 multiplied by 299,993 per 50-pound bags or equivalent divided by \$1,631,962 and multiplied by 100).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Walla Walla sweet onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 5, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on June 16, 2023 (88 FR 39377). Copies of the proposed rule were also mailed or sent via email to all Walla Walla sweet onion handlers. A copy of the proposed rule was made available through the internet by AMS via <https://>

www.regulations.gov. A 30-day comment period ending July 17, 2023, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 956 as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 956.202 to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2023, an assessment rate of \$0.20 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–22331 Filed 10–6–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1307

[Docket No. DEA–407]

RIN 1117–AB40 and 1117–AB78

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 12

Second Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications

AGENCY: Drug Enforcement Administration, Department of Justice; Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Temporary rule.

SUMMARY: On March 1, 2023 the Drug Enforcement Administration (DEA), in concert with the Department of Health and Human Services (HHS), promulgated two notices of proposed rulemakings (NPRMs) soliciting comments on proposals to allow for prescribing of controlled medications pursuant to the practice of telemedicine in instances where the prescribing practitioner has never conducted an in-person medical evaluation of the patient. On May 10, 2023, following initial review of the comments received, DEA, jointly with HHS, issued a temporary rule (First Temporary Rule) extending certain exceptions granted to existing DEA regulations in March 2020 as a result of the COVID–19 Public Health Emergency (COVID–19 PHE). These exceptions were granted in order to avoid lapses in care for patients. In particular, with respect to practitioner-patient relationships formed after the May 11, 2023, expiration of the COVID–19 PHE, the First Temporary Rule extended the temporary exceptions until November 11, 2023. In this second temporary rule, as DEA and HHS continue to consider revisions to the proposed rules set forth in the March 1, 2023 NPRMs and in light of Telemedicine Listening Sessions that DEA hosted on September 12 and 13, 2023, DEA and HHS are further extending such exceptions to existing DEA regulations for new practitioner-patient relationships through December 31, 2024.

DATES: As of November 11, 2023, the end of the effective period for the temporary rule published at 88 FR 30037 on May 10, 2023, is extended

from November 11, 2024, to December 31, 2024. This rule is effective November 11, 2023.

FOR FURTHER INFORMATION CONTACT:

Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, VA 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

I. Background

Overview

Under the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the Ryan Haight Act), a prescribing practitioner—subject to certain exceptions—may prescribe controlled medications to a patient only after conducting an in-person evaluation of that patient. In response to the COVID–19 Public Health Emergency (COVID–19 PHE), as declared by the Secretary (the Secretary) of the Department of Health and Human Services (HHS) on January 31, 2020, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247), the Drug Enforcement Administration (DEA) granted temporary exceptions to the Ryan Haight Act and DEA's implementing regulations under 21 U.S.C. 802(5)(D).

In order to prevent lapses in care, these exceptions allowed for the prescribing of controlled medications via telemedicine encounters even when the prescribing practitioner had not conducted an in-person medical evaluation of the patient. These telemedicine flexibilities authorized practitioners to prescribe schedule II–V controlled medications via audio-video telemedicine encounters, including schedule III–V narcotic controlled medications approved by the Food and Drug Administration (FDA) for maintenance and withdrawal management treatment of opioid use disorder via audio-only telemedicine encounters, provided that such prescriptions otherwise comply with the requirements outlined in DEA guidance documents, DEA regulations, and applicable Federal and State law. DEA granted those temporary exceptions to the Ryan Haight Act and DEA's implementing regulations via two letters published in March 2020:

- A March 25, 2020 “Dear Registrant” letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division (the McDermott Letter);¹ and

¹ William T. McDermott, DEA Dear Registrant letter, Drug Enforcement Administration (March 25, 2020).

Continued

• A March 31, 2020 “Dear Registrant” letter signed by Thomas W. Prevoznik, DEA’s then-Deputy Assistant Administrator, Diversion Control Division (the Prevoznik Letter).²

On March 1, 2023, DEA, in concert with HHS, promulgated two notices of proposed rulemaking (NPRMs) in the **Federal Register**—“Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation”³ (the General Telemedicine Rule) and “Expansion of Induction of Buprenorphine via Telemedicine Encounter”⁴ (the Buprenorphine Rule)—which proposed to expand patient access to prescriptions for controlled medications via telemedicine encounters relative to the pre-COVID–19 PHE landscape. The purpose of the two proposed rules was to make permanent some of the telemedicine flexibilities established during the COVID–19 PHE in order to facilitate patient access to controlled medications via telemedicine when consistent with public health and safety, while maintaining effective controls against diversion. The comment period for these two NPRMs closed on March 31, 2023. Those NPRMs generated a total of 38,369 public comments—35,454 comments on the General Telemedicine Rule and 2,915 comments on the Buprenorphine Rule.

On May 10, 2023 DEA, jointly with HHS (with the Substance Abuse and Mental Health Services Administration (SAMHSA) acting on behalf of HHS), issued the First Temporary Rule, which extended the full set of telemedicine flexibilities regarding the prescribing of controlled medications, as had been in place under the COVID–19 PHE, through November 11, 2023.⁵ The First Temporary Rule also provided a one-year grace period, through November 11, 2024, to any practitioner-patient telemedicine relationships that have been or will be established on or before November 11, 2023. In other words, under the First Temporary Rule, if a patient and a practitioner have established a telemedicine relationship

on or before November 11, 2023, the same telemedicine flexibilities that have governed the relationship to that point would continue to apply through November 11, 2024.

On August 7, 2023, DEA announced that it would host Telemedicine Listening Sessions on September 12 and 13, 2023 to receive additional input concerning the practice of telemedicine with regards to prescribing controlled medications and potential safeguards that could effectively prevent and detect diversion of controlled substances prescribed via telemedicine. DEA is carefully evaluating the information and perspectives presented at the Telemedicine Listening Sessions, as well as the comments received in response to the NPRMs, as DEA and HHS develop regulations providing access to the practice of telemedicine when consistent with public health and safety, and that also effectively mitigate the risk of possible diversion.

In light of the need to further evaluate the best course of action given the comments received in response to the NPRMs and the presentations at the Telemedicine Listening Sessions, DEA, jointly with HHS, is issuing this second temporary rule (“Second Temporary Rule”) extending the full set of telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID–19 PHE, through December 31, 2024. This extension authorizes all DEA-registered practitioners to prescribe schedule II–V controlled medications via telemedicine through December 31, 2024, whether or not the patient and practitioner established a telemedicine relationship on or before November 11, 2023. In other words, the grace period provided in the First Temporary Rule is effectively subsumed by this Second Temporary Rule, which continues the extension of the current flexibilities for all practitioner-patient relationships—not just those established on or before November 11, 2023—until the end of 2024.

The purpose of this Second Temporary Rule, like the one before it, is to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled medication prescriptions, as well as allowing adequate time for providers to come into compliance with any new standards or safeguards. DEA is working to promulgate new standards or safeguards by the fall of 2024.

II. Legal Authority

The Ryan Haight Act amended the Controlled Substances Act (CSA) to

generally require that the dispensing of controlled medications by means of the internet be predicated on a valid prescription involving at least one in-person medical evaluation.⁶ At the same time, it also established excepted categories of telemedicine pursuant to which a practitioner may prescribe controlled medications for a patient despite never having evaluated that patient in person, provided that, among other things, such practice is in accordance with applicable Federal and State laws.⁷

One of these categories authorizes the Attorney General and the Secretary to jointly promulgate rules that would allow practitioners to prescribe medications for patients via telemedicine without having had an in-person evaluation when such telemedicine practice is in accordance with applicable Federal and State laws, uses an approved telecommunications system, and is “conducted under . . . circumstances that the[y] have] . . . determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.”⁸

Pursuant to this authority, DEA, jointly with HHS, is hereby promulgating this Second Temporary Rule specifying certain circumstances under which practitioners may prescribe controlled medications, for the time period described above, to patients whom the practitioner has never evaluated in person. This Second Temporary Rule, like the First Temporary Rule, covers the portions of the NPRM related to extensions of the telemedicine flexibilities in place during the COVID–19 PHE, and it extends, through December 31, 2024, the telemedicine flexibilities that have been in place since March 2020 for prescribing controlled medications via the practice of telemedicine.

As noted previously, DEA and/or HHS anticipate implementing a final set of regulations providing access to the practice of telemedicine when consistent with public health and safety, and that also effectively mitigate the risk of possible diversion. However, given the impending expiration of the flexibilities provided in the First Temporary Rule and the additional

2020), [https://www.deadiversion.usdoj.gov/GDP/DEA-DC-018/DEA067%20DEA%20state%20reciprocity%20\(final\)\(Signed\).pdf](https://www.deadiversion.usdoj.gov/GDP/DEA-DC-018/DEA067%20DEA%20state%20reciprocity%20(final)(Signed).pdf).

² Thomas W. Prevoznik, DEA Dear Registrant letter, Drug Enforcement Administration (March 31, 2020), [https://www.deadiversion.usdoj.gov/GDP/DEA-DC-022/DEA068%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20\(Final%20+Esign\).pdf](https://www.deadiversion.usdoj.gov/GDP/DEA-DC-022/DEA068%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final%20+Esign).pdf).

³ 88 FR 12875 (Mar. 1, 2023).

⁴ 88 FR 12890 (Mar. 1, 2023).

⁵ Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 FR 30037 (May 10, 2023).

⁶ 21 U.S.C. 829(e).

⁷ 21 U.S.C. 802(54)(A)–(G). The Attorney General has delegated his rulemaking authority under this provision to the Administrator of DEA via 28 CFR 0.100. The Secretary delegated his rulemaking authority under 21 U.S.C. 802(54)(G) to the Assistant Secretary for Mental Health and Substance Use within the Substance Abuse and Mental Health Services Administration on May 4, 2023.

⁸ 21 U.S.C. 802(54)(G).

consideration of the input received during the Telemedicine Listening Sessions, DEA, jointly with HHS, has elected to again extend those flexibilities to maintain access to care during a limited window of time as they consider the appropriate pathway forward.

As explained further below, because this is an extension of limited duration of flexibilities that existed during the COVID-19 PHE, and because there are legitimate concerns regarding patient access to care following the expiration of the practitioner-patient relationship aspect of the First Temporary Rule on November 11, 2023, DEA and HHS have determined that this Second Temporary Rule is consistent “with effective controls against diversion and otherwise consistent with the public health and safety” as required under 21 U.S.C. 802(54)(G). DEA, jointly with HHS, is promulgating this temporary rule pursuant to 21 U.S.C. 802(54)(G).

HHS also has advised DEA that no additional rulemaking by HHS is necessary as it pertains to the promulgation of these provisions pursuant to 21 U.S.C. 802(54)(G).

III. Purpose and Need for Regulatory Changes

The purpose of this rulemaking is to further extend, for a limited period of time, the telemedicine flexibilities that existed during the COVID-19 PHE in order to:

- Prevent a reduction in access to care for patients who do not yet have an existing telemedicine relationship with their practitioners pending promulgation of a final rule or rules addressing telemedicine more generally.
- For relationships established both during the COVID-19 PHE and those established shortly after, prevent backlogs with respect to in-person medical evaluations in the months shortly before and after the expiration of the telemedicine flexibilities and ensure the availability of telemedicine for practitioners and patients who have come to rely on it;
- Address the urgent public health need for continued access to the initiation of buprenorphine as medication for opioid use disorder in the context of the continuing opioid public health crisis;
- Allow patients, practitioners, pharmacists, service providers, and other stakeholders sufficient time to prepare for the implementation of any future regulations that apply to prescribing of controlled medications via telemedicine;
- Enable DEA and potentially HHS to thoroughly consider the presentations

made at the Telemedicine Listening Sessions;

- Enable DEA, jointly with HHS, to conduct a thorough evaluation of regulatory alternatives in order to promulgate regulations that most effectively expand access to telemedicine encounters in a manner that is consistent with public health and safety, while also effectively mitigating against the risk of possible diversion; and
- Avoid incentivizing the investment necessary to develop new telemedicine companies that might encourage or enable problematic prescribing practices by limiting the second extension of flexibilities to a short, time-limited period.

IV. Summary of Second Temporary Rule Changes

This Second Temporary Rule amends portions of 21 CFR 1307.41 and 42 CFR 12.1 through December 31, 2024.

Paragraph (a) is amended to state that the authorization granted in the amended paragraph (c) expires at the end of *December 31, 2024*, instead of November 11, 2023.

Paragraph (c) is amended to extend the COVID-19 telemedicine prescribing flexibilities from May 12, 2023 through *December 31, 2024*, provided all of the conditions listed in paragraph (e) are met.

V. Regulatory Analyses

Administrative Procedure Act

DEA and HHS are issuing this rule without prior notice and an opportunity to comment pursuant to the Administrative Procedure Act’s (APA’s) “good cause” exception. In certain circumstances, agencies may forgo notice-and-comment rulemaking when a rulemaking is published in the **Federal Register** and the agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁹

As discussed earlier, DEA, jointly with HHS, is publishing this second temporary extension of certain exceptions granted to existing DEA regulations in March 2020 as a result of the COVID-19 PHE in order to prevent a reduction in access to care for patients that do not yet have an existing telemedicine relationship with their practitioners pending promulgation of a final rule or rules addressing telemedicine more generally. It would be impracticable for DEA and HHS to publish a notice of proposed

rulemaking; await, review, and respond to new comments; and issue a rule in the time remaining before the first extension expires on November 11, 2023. Further, the reduction in access to care that patients would experience if the existing telemedicine flexibilities ended on November 11, 2023 would be contrary to the public interest, as it could lead to potential patient harm—due to an inability to access appropriate care—in some instances.

As noted above, earlier this year DEA received 38,369 comments on two proposed rules regarding the flexibilities to be extended by this rule. DEA considered those comments in publishing the First Temporary Rule.¹⁰ Moreover, any final rule or rules that DEA and/or HHS promulgate addressing telemedicine more generally would reflect viewpoints and information from comments received in response to the proposed rules, the Telemedicine Listening Sessions, and any further comments that may be collected during additional rounds of public comment. Because the public has so recently had the opportunity to comment on these flexibilities and because DEA and HHS continue to consider information that was provided in those comments and that may be provided in the near future before issuing a final set of regulations, further opportunity for public comment on these flexibilities at this time would serve little, if any, purpose.

For these reasons, each of which individually constitutes good cause, DEA, jointly with HHS, finds that notice and public comment on this rule are impracticable, unnecessary, and contrary to the public interest.

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This Second Temporary Rule was developed in accordance with the principles of Executive Orders (E.O.) 12866, as amended by E.O. 14094 and E.O. 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866.

⁹ 5 U.S.C. 553(b)(B).

¹⁰ 88 FR 30037, 30039–30041 (May 10, 2023).

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and DEA has determined that it is a significant regulatory action under E.O. 12866, but not a Section 3(f)(1) significant regulatory action. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

DEA, jointly with HHS, is publishing this Second Temporary Rule to further extend certain exceptions DEA granted to its existing regulations in March 2020 as a result of the COVID-19 PHE in order to avoid a lapse of care for patients. The additional extension until December 31, 2024, of the COVID-19 flexibilities is necessary to thoroughly consider the presentations made at the Telemedicine Listening Sessions, as well as the comments made to the proposed rules set forth in the NPRMs.

Without this Second Temporary Rule, COVID-19 PHE telemedicine flexibilities are scheduled to expire on November 11, 2023, with respect to practitioner-patient relationships established after that date. This rule extends the expiration of those flexibilities for new practitioner-patient relationships through December 31, 2024. Because this rule does not create or remove any regulatory requirements, DEA and HHS estimate that there is no cost associated with this Second Temporary Rule. However, DEA and HHS believe this extension creates a benefit in form of cost savings to prescribers and patients and reduced transfer payments to the Federal Government, similar to those described in the General Telemedicine Rule.

However, due to the nature of this rule, differing policies between the flexibilities being extended with this Second Temporary Rule and the flexibilities still proposed in the General Telemedicine Rule, and any additional policy that may be addressed in one or more final rules, DEA is unable to quantify the cost savings and reduction in transfer payments.

Executive Order 12988, Civil Justice Reform

The Second Temporary Rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This Second Temporary Rule does not have federalism implications warranting the application of E.O. 13132. The rule

does not have substantial direct effects on the states, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Second Temporary Rule does not have substantial direct effects on the Tribes, on the relationship between the National Government and the Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this Second Temporary Rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This Second Temporary Rule, as discussed above, merely extends for a limited time the status quo with respect to the current flexibilities allowed during the COVID-19 PHE, in order to avoid lapses in coverage for patients.

Without this Second Temporary Rule, COVID-19 PHE telemedicine flexibilities would expire on November 11, 2023, with respect to practitioner-patient relationships established after that date. While this Second Temporary Rule does not create or remove any regulatory requirements, this Second Temporary Rule extends the expiration of those flexibilities through December 31, 2024. DEA and HHS believe this extension create a benefit in form of cost savings to prescribers and patients and reduced transfer payments to the Federal Government.

In accordance with the RFA, DEA will be evaluating the impact on small entities at the time the final rule or rules are issued as part of these rulemakings.

Paperwork Reduction Act of 1995

This temporary rule will not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). Also, this temporary rule does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or other organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Congressional Review Act

This temporary rule is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA).¹¹ However, pursuant to the CRA, DEA is submitting a copy of this temporary rule to both Houses of Congress and to the Comptroller General.

Signing Authority

This document of the Drug Enforcement Administration and the Department of Health and Human Services was signed on October 4, 2023, by DEA Administrator Anne Milgram. Those documents with the original signatures and dates is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects

21 CFR Part 1307

Administrative practice and procedure, Drug traffic control, Prescription drugs.

42 CFR Part 12

Administrative practice and procedure, Drug traffic control, Prescription drugs.

21 CFR Chapter II

For the reasons set out above, the Drug Enforcement Administration amends 21 CFR part 1307 as follows:

PART 1307—MISCELLANEOUS

■ 1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

■ 2. Amend § 1307.41 by revising paragraphs (a) and (c) to read as follows:

§ 1307.41 Temporary extension of certain COVID-19 telemedicine flexibilities for prescription of controlled medications.

(a) This section is in effect until the end of the day December 31, 2024. The authorization granted in paragraph (c) of this section expires at the end of December 31, 2024.

* * * * *

(c) During the period May 12, 2023, through December 31, 2024, a DEA-

¹¹ 5 U.S.C. 804(2).

registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in 21 CFR 1300.04(i), to a patient without having conducted an in-person medical evaluation of the patient if all of the conditions listed in paragraph (e) of this section are met.

* * * * *

42 CFR Chapter I

For the reasons set out above, the Department of Health and Human Services amends 42 CFR part 12 as follows:

PART 12—TELEMEDICINE FLEXIBILITIES

■ 3. The authority citation for part 12 continues to read as follows:

Authority: 21 U.S.C. 802(54)(G).

■ 4. Amend § 12.1 by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 12.1 Temporary extension of certain COVID–19 telemedicine flexibilities for prescription of controlled medications.

(a) This section is in effect until the end of the day December 31, 2024. The authorization granted in paragraph (c) of this section expires at the end of December 31, 2024.

* * * * *

(c) During the period May 12, 2023, through December 31, 2024, a Drug Enforcement Administration (DEA)-registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in 21 CFR 1300.04(i), to a patient without having conducted an in-person medical evaluation of the patient if all of the conditions listed in paragraph (e) of this section are met.

* * * * *

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

Miriam E. Delphin-Rittmon,

Assistant Secretary for Mental Health and Substance Use, Department of Health and Human Services, and Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2023–22406 Filed 10–6–23; 8:45 am]

BILLING CODE 4410–09–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[CG Docket No. 22–2; FCC 22–86; DA 23–617; FCC 23–68; FR ID 175318]

Empowering Broadband Consumers Through Transparency

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance dates.

SUMMARY: In this document, the Commission announces the compliance dates for the rules implementing the Infrastructure Investment and Jobs Act per the *Broadband Label Order*. The rules require broadband internet access service providers (providers) to display, at the point of sale, labels that disclose certain information about broadband prices, introductory rates, data allowances, and broadband speeds, and to include links to information about their network management practices, privacy policies, and the Commission's Affordable Connectivity Program.

DATES:

Effective date: October 10, 2023.

Compliance dates: Compliance with 47 CFR 8.1(a)(1), (a)(2), (a)(4) through (a)(6), published at 87 FR 76959 (December 16, 2022) and amended at 88 FR 52043 (August 7, 2023) and 88 FR 63853 (September 18, 2023), for providers with 100,000 or fewer subscriber lines is required as of October 10, 2024 and for all other providers is required as of April 10, 2024, except that compliance with the requirement in 47 CFR 8.1(a)(2) to make labels accessible in online account portals will not be required for all providers until October 10, 2024. Compliance with 47 CFR 8.1(a)(3) is required for all providers as of October 10, 2024. The Commission will publish a document in the **Federal Register** revising 47 CFR 8.1 to incorporate these compliance dates.

FOR FURTHER INFORMATION CONTACT:

Erica H. McMahon of the Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (202) 418–0346 or Erica.McMahon@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that the Office of Management and Budget approved the information collection requirements in §§ 8.1(a)(1) through (a)(6) and (b) on September 19, 2023. The Commission publishes this document as an announcement of the compliance dates of the rules. In an *Order on Reconsideration* published at 88 FR

63853 (September 18, 2023), the Commission affirmed its determinations that providers must itemize monthly discretionary fees on the label and state how much data is provided with the service plan, as outlined by the label template. It also clarified that the requirement to document interactions with consumers at alternate sales channels will be deemed satisfied if, instead, the provider establishes the business practices and processes it will follow in distributing the label through alternative sales channels; retains training materials and related business practice documentation for two years; and provides such information to the Commission upon request, within 30 days. The Commission also determined that wireless providers have the flexibility to state “taxes included” or add similar language to the label template when the provider has chosen to include taxes as part of its base price. In addition, the Commission affirmed its determination in the *Broadband Label Order* that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.” To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–21682 Filed 10–5–23; 4:15 pm]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1819, and 1852

RIN 2700–AE65

NASA Federal Acquisition Regulation Supplement: NASA Mentor-Protégé Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is finalizing amendments to the NASA Federal Acquisition Regulation Supplement (NFS) to reflect updates to NASA's Small Business Mentor Protégé Program (MPP).

DATES: Effective November 9, 2023.

FOR FURTHER INFORMATION CONTACT: R. Todd Lacks, NASA HQ, Office of

Procurement Management and Policy Division, LP-011, 300 E Street SW, Washington, DC 20456-0001. Telephone 202-358-0799 and; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the **Federal Register** at 88 FR 9421 on February 13, 2023, to update NASA’s Small Business Mentor Protégé Program (MPP). Amendments discussed included the requirement of Small Business Specialists’ concurrence on the signed letter of endorsement; requirements associated with credit received towards subcontracting goals; changes to the MPP reporting requirement from semi-annually to annually and editorial changes for clarity. NASA also proposed amendments to reflect the annual negotiation of its small business percentage goals. Finally, these revisions will emphasize collaboration among representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices to reduce barriers to entry and to opportunities for all small business concerns and Historically Black Colleges and Universities or Minority Institutions.

II. Discussion

NASA received no public comments and is finalizing this rule with no changes.

III. Applicability to Commercial Item Acquisitions, Including Commercially Available Off-The-Shelf (COTS) Items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

The final rule implements updates to NASA’s MPP. Subpart 1819.72 does not limit the application of the program requirements to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905, 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply this policy change to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action as defined in E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB).

V. Regulatory Flexibility Act

NASA does not expect this rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* No comments were received on the initial regulatory flexibility analysis and NASA is finalizing it with no changes. A summary is provided below. The final rule will apply to all current and future participants of the MPP. While the final rule will apply to all classes of small business, it will not necessarily affect all those businesses because the final rule only applies to those that are a part of the MPP. As reported by NASA’s Office of Small Business Programs (OSBP), NASA has entered 6, 1, and 3 mentor protégé agreements in 2018, 2019, and 2020, respectively. Therefore, this policy will have minimal impact on small businesses at large.

VI. Paperwork Reduction Act

This rule contains information collection requirements requiring the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). As part of the proposed rule, NASA requested comments on a reinstatement with change for OMB 2700-0078, *Mentor Protege Program Small Business and Small Disadvantaged Business Concerns*. In the proposed rule, NASA discussed decreasing the collection requirement from semi-annual to annual as the Agency conducts semi-annual Mentor Protégé performance reviews, which are more effective in tracking milestones over the life of the agreement than the submission of semi-annual reports. This change will reduce the reporting requirement on small businesses from semi-annual to annual and still capture necessary information from the semi-annual performance reviews. No comments were received on this change.

List of Subjects in 48 CFR Parts 1801, 1819, and 1852

Government procurement.

Erica Jones,
NASA FAR Supplement Manager.

Accordingly, NASA amends 48 CFR parts 1801, 1819, and 1852 as follows:

■ 1. The authority citation for parts 1801, 1819, and 1852 continue to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.1—Purpose, Authority, Issuance

■ 2. Revise section 1801.106 to read as follows:

1801.106 Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

NFS segment	OMB control No.
1819	2700-0078
1823	2700-0089
1827	2711-0052
1843	2700-0054
1852.223-70	2700-0160
NF533	2700-0003
NF1018	2700-0017

PART 1819—SMALL BUSINESS PROGRAMS

Subpart 1819.2—Policies

■ 3. Amend section 1819.201 by revising the section heading and paragraph (a)(ii) to read as follows:

1819.201 General policy.

- (a) * * *
- (ii) NASA annually negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices will collaborate to reduce barriers to entry and to increase opportunities for small business concerns, identified in paragraph (a)(i) of this section, and Historically Black Colleges and Universities or Minority Institutions.

Subpart 1819.72—NASA Mentor-Protégé Program

- 4. Amend section 1819.7201 by:
- a. Revising paragraph (a) introductory text; and
- b. In paragraph (b), adding the acronym “(MPA)” after the words “mentor-protégé agreements”.
- The revision reads as follows:

1819.7201 Scope of subpart.

(a) This subpart implements the NASA Mentor-Protégé Program (hereafter referred to as the Program) as authorized by the Small Business Administration in accordance with 13 CFR 125.10. The purpose of the program is to:

* * * * *

■ 5. Revise section 1819.7202 to read as follows:

1819.7202 Eligibility.

(a) To be eligible as a mentor, an entity must be—

(1) A large business prime contractor or research institution performing with at least one approved subcontracting plan (other than a commercial plan) negotiated with NASA, pursuant to FAR subpart 19.7. A contractor may apply to become a mentor if they currently are not performing under a NASA contract, as long as they are currently performing another Federal agency contract with an approved subcontracting plan. However, the NASA MPA will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan.

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the program if, at the time of submission of the application to the NASA Mentor Protégé Program Office (MPPO), the entity is debarred or suspended from contracting with the Federal Government pursuant to FAR subpart 9.4.

(b) To be eligible to participate as a protégé, an entity must be eligible for award of Federal contracts in accordance with FAR subpart 9.4, *i.e.*, entities cannot be suspended or debarred at the time of application for the program and must be classified as one of more of the following entities or socio-economic categories as defined by FAR part 2:

- (1) Small disadvantaged business;
 - (2) Women-owned small or economically disadvantaged women-owned concern;
 - (3) Veteran-owned or service-disabled veteran-owned small business concern;
 - (4) Historically underutilized business zone concern;
 - (5) Historically Black College and University or Minority-Serving Institution;
 - (6) Current NASA Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase II Company; or
 - (7) An entity participating in the AbilityOne Program.
- (c) A protégé firm may self-certify to a mentor firm that it meets the

requirements set forth in paragraph (b) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements.

■ 6. Revise section 1819.7203 to read as follows:

1819.7203 Mentor-protégé advanced payments.

If advance payments are contemplated, the mentor must first have the advance payments approved by the contracting officer in accordance with FAR subpart 32.4.

■ 7. Amend section 1819.7204 by:

- a. Revising paragraphs (a) introductory text and (a)(1) and (3);
- b. Removing paragraph (a)(4);
- c. Redesignating paragraph (a)(5) as paragraph (a)(4);
- d. Removing paragraph (c);
- e. Redesignating paragraph (b) as paragraph (c); and
- e. Adding a new paragraph (b).

The revisions and addition read as follows:

1819.7204 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors, will submit a complete agreement package to the contracting officer, contracting officer's representative (COR), and the cognizant Small Business Specialist (SBS) at the NASA Center. The submission package must include the following:

- (1) A signed MPA;

* * * * *

- (3) The estimated cost of the developmental assistance to be provided, broken out per year and per task, in a separate cost volume; and

* * * * *

(b) The NASA MPPO may require additional information as requested upon agreement submission.

* * * * *

■ 8. Amend section 1819.7205 by:

- a. Revising the section heading and paragraph (a);
- b. Removing paragraph (c)(4);
- c. Redesignating paragraphs (c)(5) and (6) as paragraphs (c)(4) and (5); and
- d. Revising paragraph (d).

The revisions read as follows:

1819.7205 Award Fee Program.

(a) Mentors may be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at each award fee determination period.

* * * * *

(d) The Award Fee Program is an addition to the credit agreement,

reference 1819.7206. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

■ 9. Add section 1819.7206 to read as follows:

1819.7206 Credit agreement.

In a MPA (as referenced in section 6 "Agreements" of the MPP Guidebook), a mentor receives credit toward its subcontracting goals. The credit agreement only applies to mentors with an Individual Subcontract Plan.

(a) Costs incurred under a credit agreement are applied on a one-to-one basis toward applicable subcontracting goals, under a Federal agency subcontracting plan (FAR subpart 19.7).

(b) The credit is reported on the mentor's individual subcontracting report (ISR) in the comments section twice a year and in the Summary Subcontract Report (SSR) once a year. The MPPO will verify the dollars contained in the annual reports.

■ 10. Amend section 1819.7212 by revising paragraphs (a), (b), (c) introductory text, and (d) through (g) to read as follows:

1819.7212 Reporting requirements.

(a) Mentors must report on the progress made under active MPA annually throughout the term of the agreement.

(b) Reports are due 30 days after the end of each 12-month period of performance commencing with the start of the agreement.

(c) Each annual report must include the following data on performance under the MPA:

* * * * *

(d) Annually the protégé must provide an independently developed progress report using the annual report template, on the progress made during the prior twelve months by the protégé in employment, revenues, and participation in NASA contracts during each year of the Program participation term. The protégé must also provide an additional post-agreement report for each of the two years following the expiration of the Program participation term.

(e) The protégé annual report required by paragraph (d) of this section must be submitted separately from the mentor's annual report submission.

(f) Reports for all agreements must be submitted to the NASA Mentor Protégé Program Manager, the mentor's cognizant administrative Contracting Officer, and their Small Business Specialist.

(g) Templates for the annual report and the Post-Agreement report and

guidance for their submission are available at: <https://www.nasa.gov/osbp/mentor-protege-program>.

■ 11. Add section 1819.7213 to read as follows:

1819.7213 Reporting allowances.

The mentor may include its developmental expenditures from the annual report, reference 1819.7212, in its reported dollars in its Summary Subcontracting Report (SSR) in the Electronic Subcontracting Reporting System (eSRS).

(a) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(b) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(c) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's since there is no such reporting category for SSR's or ISR's.

■ 12. Amend section 1819.7215 by revising paragraph (a) to read as follows:

1819.7215 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in any contract that includes the clause at FAR 52.219–9, Small Business Subcontracting Plan.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

■ 13. Amend section 1852.219–77 by revising the date of the clause and paragraphs (b) through (d) to read as follows:

1852.219–77 NASA Mentor-Protégé Program.

* * * * *

NASA MENTOR-PROTÉGÉ PROGRAM (OCT 2023)

* * * * *

(b) The Program consists of—

(1) Mentors, which are large business prime or research institution with at least one approved NASA subcontracting plan;

(2) Protégés, which qualify as one or more of the following:

(i) Small Business Concern, as defined in FAR part 2, Definitions of Parts and Terms, including: Women-Owned or Economically-Owned Concern; Veteran-Owned or Service-Disabled Veteran-Owned Small Business Concern; Historically Underutilized Business Zone Concern;

(ii) Historically Black College and University or Minority-Serving Institution;

(iii) Current NASA SBIR/STTR Phase II Company; or

(iv) An Entity Participating in the AbilityOne Program;

(3) MPA endorsed by the cognizant NASA centers and approved by the NASA MPPO; and

(4) In contracts with award fee incentives, potential for payment of an award fee for voluntary participation and successful performance in the Mentor-Protégé Program, in accordance with NFS 1819.7205.

(c) Mentor participation in the program, described in NFS 1819.72, means providing technical, managerial, and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA, as well as other Federal and commercial contracts and subcontracts.

(d) Eligible businesses and research institutions interested in participating in the program are encouraged to contact the NASA MPPO.

* * * * *

■ 14. Amend section 1852.219–79 by:

■ a. Revising the date of the clause and paragraph (a);

■ b. Removing the undesignated text following paragraph (a);

■ c. Redesignating paragraphs (b) through (f) as paragraphs (c) through (g);

■ d. Adding a new paragraph (b);

■ e. Revising newly redesignated paragraphs (c) introductory text and (c)(3) and (4);

■ f. Removing newly redesignated paragraph (c)(5); and

■ g. Revising newly redesignated paragraphs (d) through (g).

The revisions and addition read as follows:

1852.219–79 Mentor requirements and evaluation.

* * * * *

MENTOR REQUIREMENTS AND EVALUATION (OCT 2023)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to:

(1) Provide incentives to NASA contractors, performing under at least one active approved subcontracting plan negotiated with NASA to assist protégés in

enhancing their capabilities to perform as viable NASA, other Government, and commercial suppliers on contract and subcontract requirements;

(2) Increase the overall participation of protégés as subcontractors and suppliers under NASA contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protégés and mentors.

(b) The Mentor shall comply with the annual reporting requirements detailed in NASA FAR Supplement 1819.7212.

(c) NASA will evaluate the Mentor's performance on the following factors in the subcontracting element of the annual Contractor Performance Assessment Report (CPAR). If this contract includes an award fee incentive, this evaluation will also be included as part of the subcontracting element in the award fee evaluation process.

* * * * *

(3) The extent to which the mentor and protégé have met the developmental milestones outlined in the agreement; and

(4) The extent to which the mentor has contributed to advancing the protégé's technical readiness level. This factor only applies if the protégé is a current NASA SBIR/STTR Phase II contractor.

(d) Annual reports shall be submitted by the Mentor and the Protégé to the MPPO, following the annual report template found on the website at www.nasa.gov/osbp.

(1) Except for as noted in paragraph (d)(4) of this section, the Mentor may include its developmental expenditures from the annual report, reference 1819.7212, Reporting Requirements, in its reported dollars in its Summary Subcontracting Report (SSR) in eSRS.

(2) If the protégé is also the mentor's immediate next-tier subcontractor under a NASA contract that contains a subcontracting plan, the Mentor may also include its developmental expenditures in its Individual Subcontracting Report (ISR) for that contract. Expenditures may be applied to each socio-economic subcategory on the SSR and ISR for which the protégé qualifies.

(3) Developmental expenditures included in SSR's and ISR's must also be separately reported and explained (including the actual dollar amount) in the "Remarks" section of each report.

(4) Expenditures for AbilityOne protégés cannot be included in SSR's or ISR's, since there is no such reporting category for SSR's or ISR's.

(e) The mentor will notify the cognizant NASA center and NASA OSBP in writing, at least 30 days in advance of the Mentor's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program.

(f) Every six months, the Mentor and Protégé, as appropriate, will formally brief the MPPO, and the contracting officer during a formal program review regarding program accomplishments, as it pertains to the approved agreement.

(g) NASA may terminate MPA for good cause, thereby excluding mentors or protégés from participating in the program. These actions shall be approved by the MPPO. NASA shall terminate an agreement by delivering to the contractor a letter specifying

the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort

should the agreement be terminated shall be submitted with the agreement.

* * * * *

[FR Doc. 2023–21983 Filed 10–6–23; 8:45 am]

BILLING CODE 7510–13–P

Proposed Rules

Federal Register

Vol. 88, No. 194

Tuesday, October 10, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–22–0079]

Pears Grown in Oregon and Washington; Amendment to the Marketing Order

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

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to Marketing Order No. 927, which regulates the handling of pears grown in Oregon and Washington. The proposed amendment would revise the Fresh Pear Committee's approval requirement for recommending modifications to the marketing order's fresh pear handling regulations from 80 to 75 percent.

DATES: Comments must be received by December 11, 2023 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by Email at: MarketingOrderComment@usda.gov, or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the identity of the individuals or entities

submitting comments will be made public.

FOR FURTHER INFORMATION CONTACT:

Geronimo Quinones, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: MarketingOrderComment@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Fresh Pear Committee (“Committee”) administers the Order's provisions relating to the handling of pears for the fresh market. The Committee comprises growers and handlers of pears operating within Oregon and Washington, and a public member.

Section 608c(17) of the Act (7 U.S.C. 608c(17)) and the applicable rules of practice and procedure at 7 CFR 900.43 authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (“AMS”) will consider comments received in response to this proposed rule and, based on all the information available, will determine if the amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued, and growers would be allowed to vote for or against the proposed amendment. AMS would then issue a final rule effectuating any amendments favored in the referendum.

AMS is issuing this proposed rule in conformance with Executive Orders

12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget (“OMB”) under section 6 of the Executive Order.

This proposed rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to a marketing order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. The handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The handler may then seek judicial review of the ruling by filing suit in the U.S. district

court for the district in which the handler is an inhabitant or has his or her principal place of business, provided the action is filed no later than 20 days after the date of entry of the ruling.

Section 608c(17) of the Act (7 U.S.C. 608c(17)) and the supplemental rules of practice at 7 CFR 900.43 authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. In determining whether informal rulemaking is appropriate, USDA is required to consider the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed herein is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. This proposed rule would revise the approval requirement for recommending modifications to the Order's fresh pear handling regulations. In addition, as discussed in the Initial Regulatory Flexibility Analysis section below, the proposed rule is not anticipated to have any significant economic impact on affected entities. Further, the proposed amendment would not impose any new reporting, record-keeping, or compliance costs on businesses.

The Committee recommended the proposed amendment to the Order following deliberations at a public meeting held on June 2, 2022. The Committee recommended this change by vote of nine in favor and two opposed, with one abstention. The two opposing voters did not feel the proposed change was necessary, and the abstention voter wanted an even lower requirement. The Committee submitted its formal recommendation to amend the Order through the informal rulemaking process on August 23, 2022, and subsequently provided AMS clarification about the recommendation on December 1, 2022.

Proposal—Prerequisites to Recommendations

Currently, sections 927.33(a) and 927.52(a) of the Order provide that all decisions of the Committee require a supporting vote of 75 percent or greater; except that a decision to recommend changes to the regulations concerning the shipment of fresh pears requires a supporting vote of 80 percent or greater. The voting requirements in section 927.52 of the Order utilize a weighted calculation of votes based on the

handling of specific pear varieties. The Committee recommended modifying the current 80-percent voting requirement to 75 percent to align these voting requirements, mitigate confusion, and simplify the Order.

In 2020, the Committee recommended a regulation change to the Anjou pear variety in three separate motions, each receiving a separate vote. A subcommittee was formed to investigate how the proposed modification to the voting requirement might have affected the 2020 voting outcomes. The subcommittee analyzed the three motions by comparing each voting outcome at 75- and 80-percent vote requirement levels. Of the three, two motions did not have enough Committee support at either voting level and received only 52 percent and 66 percent of the vote. The third motion for the regulation change received 86 percent affirmative support by vote. Therefore, the subcommittee concluded that changing the requirement to 75 percent would not have altered the outcome of those votes.

While most of the Committee believes the current 80-percent voter affirmation requirement is too high, two members believe the change to 75 percent is not necessary, and one member believes the change is not impactful enough.

The Committee considered alternatives, including a 70-percent requirement. However, after running simulations with historical data to assess the impact of a 70- or 75-percent requirement, the Committee determined 75 percent to be optimal in that it did not materially affect vote outcomes for recommendations. Additionally, the adjustment from an 80- to 75-percent voting requirement establishes regulatory consistency with other Committee recommendations that have a 75-percent voting requirement. As such, the Committee believes this proposal would provide more continuity to all Committee voting procedures without materially changing voting outcomes, thereby mitigating confusion and improving the efficiency of its operations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order to ensure that small businesses will not be unduly or disproportionately

burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 708 growers of fresh pears in the production area and 27 handlers subject to regulation under the Order. At the time this analysis was prepared, small agricultural producers of pears were defined by the Small Business Administration (“SBA”) as those having annual receipts equal to or less than \$3,500,000 (North American Industry Classification System code 111339, Other Noncitrus Fruit Farming), and small agricultural service firms were defined as those whose annual receipts are equal to or less than \$34,000,000 (North American Industry Classification System Code 115114, Postharvest Crop Activities) (13 CFR 121.201).

According to the National Agricultural Statistics Service, the 2020 average grower price received for fresh pears produced in Oregon and Washington was \$11.39 per standard 44-pound box or equivalent. Committee data indicates total production was 16,290,225 44-pound standard boxes or equivalent in the 2019–20 fiscal period. The total 2019–20 fiscal period value of assessable fresh “summer/fall” and “winter” pears grown in Oregon and Washington was \$185,545,663 (16,290,225 44-pound standard boxes or equivalent multiplied by \$11.39 per box equals \$185,545,663). Dividing the crop value by the estimated number of growers (708), yields an estimated average receipt per grower of \$262,070.

According to USDA Market News data, the reported average terminal price for 2020 Oregon and Washington fresh pears was \$34.87 per 44-pound standard box or equivalent (data reported in $\frac{1}{8}$ bushel). Multiplying the Committee-reported 2019–20 Oregon and Washington total production of 16,290,225 44-pound standard boxes or equivalent by the estimated average price per box or equivalent of \$34.87 equals \$568,040,146. Dividing this figure by 27 regulated handlers yields estimated average annual handler receipts of \$21,038,524. Therefore, using the above data, the majority of growers and handlers of Oregon and Washington fresh pears may be classified as small entities.

This proposed rule would revise a provision in the Order's subpart regulating handling of pears grown in Oregon and Washington. This proposal would align the approval requirement for recommending modifications to the Order's fresh pear handling regulations,

which is 80 percent, with all other Committee voting requirements within the Order. Currently, all other Committee recommendations require 75 percent concurrence. The different voting requirements sometimes result in confusion for some Committee members, which can disrupt Committee operations.

The proposed amendment has no anticipated impact on the reporting, record-keeping, or compliance costs of small businesses.

The proposed amendment would not directly increase or decrease costs to members of the pear industry.

Alternatives to the proposed amendment were considered, including making no changes at this time. However, the Committee believes it is necessary to bring all voting requirements in-line for clarity and understanding to ensure the efficient execution of the Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements would be necessary because of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Committee's meetings are widely publicized throughout the pear production area. All interested persons are invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the meeting held on June 2, 2022, was open to the public, and all entities, both large and small, were encouraged to express their views on the proposed amendment.

Interested persons are invited to submit comments on the proposed amendment to the Order, including comments on the regulatory and information collection impacts of the proposed rule on small businesses.

Following analysis of any comments received on the amendment in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and growers would be provided the opportunity to vote for or against the proposed amendment. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. A final rule would then be issued to effectuate any amendment favored in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 927; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 927 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 927 as hereby proposed to be amended regulates the handling of pears grown in Oregon and Washington and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 927 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 927 as hereby proposed to be amended prescribes,

insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pears produced or packed in the production area; and

5. All handling of pears grown or handled in the production area, as defined in Marketing Order 927, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Any comments received on the amendment proposed in this rule will be analyzed and, if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine industry support for the proposed amendment. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 927 as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 927.52 by revising paragraph (a) to read as follows:

§ 927.52 Prerequisites to recommendations.

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner described in paragraph (b) of this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner

prescribed in paragraph (b) of this section, of all members.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–22335 Filed 10–6–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1990; Project Identifier AD–2023–00734–A]

RIN 2120–AA64

Airworthiness Directives; Various 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 various airplanes modified with a certain configuration of the Garmin GFC 500 Autopilot System installed per Supplemental Type Certificate (STC) No. SA01866WI. This proposed AD was prompted by a report of an un-commanded automatic pitch trim runaway when the autopilot was first engaged. This proposed AD would require updating the applicable Garmin GFC 500 Autopilot System software for your airplane and would prohibit installing earlier versions of that software. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 24, 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* by searching

for and locating Docket No. FAA–2023–1990; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Christopher Withers, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (316) 946–4190; email: *christopher.d.withers@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–2023–1990; Project Identifier AD–2023–00734–A” 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 Christopher Withers, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209. Any

commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of an incident involving a Textron Aviation Inc. (type certificate previously held by Beech Aircraft Corporation, Raytheon Aircraft Company, Hawker Beechcraft Corporation, and Beechcraft Corporation) Model F33A Bonanza airplane having an un-commanded automatic pitch trim runaway when the autopilot was first engaged. The airplane was equipped with a Garmin GFC 500 Autopilot System that included an optional GSA 28 pitch trim servo. The affected Garmin GFC 500 Autopilot System includes G5, G3X Touch, or GI 275 software and was installed per STC No. SA01866WI using Master Drawing List 005–01264–00, Revisions 1 through 76.

The affected autopilot system software does not properly handle certain hardware failures of the pitch trim servo. This could result in an automatic un-commanded pitch trim runaway, and loss of control of the airplane.

An investigation by Garmin International and the National Transportation Safety Board (NTSB) determined this condition could exist on various Textron Aviation, Inc., Piper Aircraft, Inc., Commander Aircraft Corporation, Mooney International Corporation, and DAHER AEROSPACE airplane models equipped with a Garmin GFC 500 Autopilot System that includes an optional GSA 28 pitch trim servo.

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require updating the applicable Garmin GFC 500 Autopilot System software for your airplane and would prohibit installing earlier versions of that software.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 5,900 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update autopilot software	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$501,500

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:

Various Airplanes: Docket No. FAA–2023–1990; Project Identifier AD–2023–00734–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all airplane models specified in Table 1 to paragraph (c) of this AD, certificated in any category, having a Garmin GFC 500 Autopilot System that includes an optional GSA 28 pitch trim servo installed per Supplemental Type Certificate No. SA01866WI using Master Drawing List 005–01264–00, Revisions 1 through 76.

TABLE 1 TO PARAGRAPH (c)—APPLICABLE AIRPLANE MODELS

Type certificate holder	Airplane model
Commander Aircraft Corporation	112 and 114.
DAHER AEROSPACE	TB 20 and TB 21.
Mooney International Corporation	M20.
Piper Aircraft, Inc	PA–24.
Piper Aircraft, Inc	PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–235, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, and PA–28RT–201T.
Piper Aircraft, Inc	PA–32–260, PA–32–300, PA–32–301, PA–32–301FT, PA–32–301T, PA–32–301XTC, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (HP), PA–32R–301 (SP), and PA–32R–301T.
Textron Aviation Inc. (type certificate previously held by Beech Aircraft Corporation, Raytheon Aircraft Company, Hawker Beechcraft Corporation, and Beechcraft Corporation).	B19, B23, and B24R.
Textron Aviation Inc. (type certificate previously held by Beech Aircraft Corporation, Raytheon Aircraft Company, Hawker Beechcraft Corporation, and Beechcraft Corporation).	C35, D35, E35, F35, and G35.
Textron Aviation Inc. (type certificate previously held by Beech Aircraft Corporation, Raytheon Aircraft Company, Hawker Beechcraft Corporation, and Beechcraft Corporation).	F33A, H35, J35, K35, M35, N35, P35, S35, V35, 36, A36, and B36TC.
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	172.
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	172RG.
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	177.
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	182, 182G, and 182R.

TABLE 1 TO PARAGRAPH (c)—APPLICABLE AIRPLANE MODELS—Continued

Type certificate holder	Airplane model
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	206.
Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company).	210.

(d) Subject

Joint Aircraft System Component (JASC)
Code 2210, Autopilot System.

(e) Unsafe Condition

This AD was prompted by a report of an un-commanded automatic pitch trim runaway when the autopilot was first engaged. The FAA is issuing this AD to address autopilot software that does not properly handle certain hardware failures of the pitch trim servo. The unsafe condition, if not addressed, could result in un-commanded automatic pitch trim runaway and loss of control of the airplane.

(f) Compliance

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

(g) Required Action

Within 12 months after the effective date of this AD, update the Garmin GFC 500 Autopilot System software applicable to your airplane to a version that is not 8.01 or earlier for the G5, not version 9.01 or earlier for the G3X Touch, and not version 2.59 or earlier for the GI 275.

(h) Installation Prohibition

As of the effective date of this AD, do not install Garmin GFC 500 Autopilot System Software that is version 8.01 or earlier for the G5, version 9.01 or earlier for the G3X Touch, or version 2.59 or earlier for the GI 275, on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Christopher Withers, Aviation Safety Engineer, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (316) 946-4190; email: christopher.d.withers@faa.gov.

(k) Material Incorporated by Reference

None.

Issued on October 3, 2023.

Victor Wicklund,

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

[FR Doc. 2023-22352 Filed 10-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2023-1614; Airspace Docket No. 23-ASW-14]

RIN 2120-AA66

Establishment of Class E Airspace; Lajitas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Lajitas, TX. The FAA is proposing this action to support new instrument procedures at this airport.

DATES: Comments must be received on or before November 24, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2023-1614 and Airspace Docket No. 23-ASW-14 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5874.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,

and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice (DOT/ALL-14FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101

Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

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

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

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Establishing Class E airspace extending upward from 700 feet above the surface within a 3.4-mile radius of Lajitas International Airport, Lajitas, TX.

This action is to support new instrument procedures and IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance

with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Lajitas, TX [Establish]

Lajitas International Airport, TX
(Lat. 29°16'38" N, long 103°41'09" W)

That airspace extending upward from 700 feet above the surface within a 3.4-mile radius of the airport beginning at the 226° bearing clockwise to the 123° bearing, thence to the point of beginning, within 2 miles north and south of the airport's 076° bearing extending to 10.2 miles east, and within 2.2 miles north and 2.1 miles south of the airport's 265° bearing extending to 7.8 miles west, excluding that airspace within Mexico and the sensitive bird nesting area south and east of the airport.

* * * * *

Issued in Fort Worth, Texas, on October 2, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–22325 Filed 10–6–23; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register

Vol. 88, No. 194

Tuesday, October 10, 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

Agricultural Marketing Service

[Doc. No. AMS–FTPP–23–0046]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection for the Reporting and Recordkeeping Requirements Under Regulations Under the Perishable Agricultural Commodities Act (PACA), 1930, as amended.

DATES: Comments on this notice must be received by December 11, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at <https://www.regulations.gov>. All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to: Natalie Worku, PACA Recordkeeping and Reporting Comments, AMS, Fair Trade Practices Program, PACA Division, 1400 Independence Avenue SW, Room 2507–S, Stop 0242, Washington, DC 20250–0242; Telephone: (202) 205–4887, Fax: (202) 690–4413; or Email: Natalie.Worku@usda.gov. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be

included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT:

Natalie Worku, Program Analyst; Fair Trade Practices Program, PACA Division; Telephone: (202) 205–4887; or Email: Natalie.Worku@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair-trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA provides for prompt payment to fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals found to have violated the law's standards for fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses

every three years. All other licensees renew yearly. License applications and renewals may be submitted electronically through the ePACA online portal, sent by email or facsimile, or submitted in paper form. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected pursuant to OMB Number 0581–0031 is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and to enforce the PACA and the regulations. The purpose of this notice is to solicit comments from the public concerning our information collection.

We estimate the paperwork and time burden of the above referenced information collection to be as follows:

Form FFTP–211, Application for License: average of .25 hours per application per response.

Form FFTP–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 3,401 annual responses.

Regulations Section 46.18—Record of Produce Received: Average of 5 hours with approximately 6,730 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 685 recordkeepers.

Regulations Section 46.46(c)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 10 principals.

Regulations Sections 46.2(aa)(11) and 46.46(e)(1)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,345 recordkeepers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response annually.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of

commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 9,178.

Estimated Total Annual Responses: 25,284.

Estimated Number of Responses per Respondent: 2.75 (rounded).

Estimated Total Annual Burden on Respondents: 87,409.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023-22342 Filed 10-6-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-SC-23-0053]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of and revision to the currently approved information collection for the Child Nutrition Labeling Program.

DATES: Comments on this notice must be received by December 11, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at <https://www.regulations.gov>. All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to Standardization Branch, Specialty Crops Inspection Division, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: Patricia Tung-Tayman, Senior Food Technologist, Telephone: (202) 720-0367, or Email: CNLabeling@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Labeling Program.

OMB Number: 0581-0261.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Child Nutrition (CN) Labeling Program is a voluntary technical assistance service that helps schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) determine a product's contribution toward the food-based meal pattern requirements. (See appendix C to 7 CFR parts 210, 220, 225, and 226 for more information on these programs.) A CN label on a product assures schools and other Child Nutrition Program operators that the product contributes to the meal pattern requirements as printed on the label. There is no Federal requirement for commercial products to have a CN label statement in order to be included in meals served by schools and institutions. The label review program transferred from the Food and Nutrition Service to AMS in 2010.

To participate in the CN Labeling Program, a manufacturer submits a label application to AMS for evaluation. AMS reviews the product formulation to determine the contribution a serving of the product makes towards the food-based meal pattern requirements. The application form submitted to AMS is the same form that a manufacturer submits to the USDA's Food Safety and Inspection Service (FSIS) Labeling and Program Delivery Division for review of meat and poultry labels. Participation in the CN Labeling Program is voluntary; manufacturers who wish to place a CN label on their products must comply with CN Labeling Program requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Manufacturers who produce food for the school foodservice.

Estimated Number of Respondents: 203.

Estimated Total Annual Responses: 812.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 203 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

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

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023-22338 Filed 10-6-23; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****[Docket No. FSIS–2023–0022]****Notice of Request for Renewal of an Approved Information Collection: Salmonella Initiative Program****AGENCY:** Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).**ACTION:** Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew the approved information collection regarding the *Salmonella* Initiative Program (SIP). FSIS is making no changes to the current collection. The approval for this information collection will expire on February 29, 2024.

DATES: Submit comments on or before December 11, 2023.**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

- **Hand- or Courier-Delivered Submittals:** Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2023–0022. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 937–4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program

Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 937–4272.

SUPPLEMENTARY INFORMATION:

Title: *Salmonella* Initiative Program.
OMB Number: 0583–0154.

Expiration Date: February 29, 2024.

Type of Request: Request for renewal of an approved information collection.
Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS is requesting renewal of the approved information collection regarding the *Salmonella* Initiative Program (SIP). FSIS is making no changes to the current collection. The approval for this information collection will expire on February 29, 2024.

Through SIP, FSIS offers incentives to meat and poultry slaughter establishments to control *Salmonella* in their operations. Under SIP, FSIS does this by granting waivers of certain regulatory requirements under the condition that establishments test for *Salmonella*, *Campylobacter* (if applicable), and an Aerobic Count for other indicator organisms and share all sample results with FSIS. In return for meeting the conditions of SIP, the Agency grants establishments appropriate waivers of certain regulatory requirements, based upon establishment proposals and documentation, under FSIS regulations at 9 CFR 303.1(h) and 381.3(b). These regulations specifically provide for the Administrator to waive for limited periods any provisions of the regulations to permit experimentation so that new procedures, equipment, or processing techniques may be tested to facilitate definite improvements. Establishments participating in SIP agree to the conditions of SIP regarding pathogen testing and sharing of test result data with FSIS.

FSIS has made the following estimates based upon an information collection assessment:

Respondents: Official slaughter establishments that are under a waiver.

Estimated Number of Respondents: 79.

Estimated Number of Annual Responses per Respondent: 325.

Estimated Total Annual Burden on Respondents: 17,628 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 937–4272.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and

notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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, audiotope, 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.

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Theresa Nintemann,

Deputy Administrator, FSIS.

[FR Doc. 2023-22422 Filed 10-6-23; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2023-0023]

Notice of Request for New Information Collection: Small and Very Small Establishment Outreach Survey

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to request a new information collection to solicit feedback from small and very small establishment owners. FSIS plans to use a multi-language survey to ascertain how FSIS can better service the needs of small and very small establishments and improve outreach to them. This is a new information collection with 417 hours.

DATES: Submit comments on or before December 11, 2023.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal*: This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail*: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- *Hand- or Courier-Delivered Submittals*: Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2023-0023. Comments received in response to this docket will be made available for public inspection and

posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 937-4272 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 937-4272.

SUPPLEMENTARY INFORMATION:

Title: Small and Very Small Establishment Outreach Survey.

OMB Number: 0583-NEW.

Type of Request: Request for a new information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS plans to use a multi-language survey to solicit feedback from small and very small establishment owners to ascertain how FSIS can better service the needs of small and very small establishments and improve outreach to them. This is a new information collection with 417 hours.

This survey is one of many ways FSIS is working to bring equity—that is, consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment—to small and very small establishments. Results will inform the Agency on ways to improve engagement with, and outreach to, small and very small establishments, particularly those in underrepresented communities.

FSIS has made the following estimates based upon an information collection assessment:

Respondents: Small and Very Small establishment owners.

Estimated No. of Respondents: 5,000.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 417 hours.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 937–4272.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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.

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Theresa Nintemann,
Deputy Administrator, FSIS.

[FR Doc. 2023–22356 Filed 10–6–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2023]

Foreign-Trade Zone (FTZ) 218; Authorization of Production Activity; Derecktor Fort Pierce, LLC; (Refurbished Water Vessels and Hulls); Fort Pierce, Florida

On June 6, 2023, Derecktor Fort Pierce, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 218A, in Fort Pierce, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 38483, June 13, 2023). On October 4, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: October 4, 2023.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2023–22411 Filed 10–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico; Preliminary Results of 2021–2022 Administrative Review

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the respondents selected for individual examination, Ceuta Produce S de R.L. de C.V. and its affiliate, Rancho la Memoria, S. de R.L. de C.V. (collectively, Ceuta) and Valores Horticolas Del Pacifico S.A. De C.V. (VALHPAC), complied with the Agreement Suspending the Antidumping Duty (AD) Investigation on Fresh Tomatoes from Mexico (2019 Agreement), for the period of review (POR) September 1, 2021, through August 31, 2022, except for certain instances of inconsequential and/or inadvertent noncompliance. We preliminarily determine that such

noncompliance does not materially frustrate the purposes of the 2019 Agreement. Commerce also preliminarily determines that the 2019 Agreement continued to meet the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act) during the POR.

DATES: Applicable October 10, 2023.

FOR FURTHER INFORMATION CONTACT:

David Cordell or Walter C. Schaub, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-0408 or (202) 482-0907, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2019, Commerce signed an agreement under section 734(c) of the Act, with representatives of Mexican fresh tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico,¹ suspending the AD investigation on fresh tomatoes from Mexico.²

On September 29, 2022, the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, filed a request for an administrative review of the 2019 Agreement. Commerce published notice of its initiation of the review on November 3, 2022.³ On January 30, 2022, Commerce selected mandatory respondents and issued questionnaires to two respondents, listed here in alphabetical order: Ceuta and VALHPAC.⁴

Scope of the 2019 Agreement

Merchandise covered by the 2019 Agreement is typically classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. The tariff classification is provided for convenience and customs purposes; however, the written description of the

scope of this 2019 Agreement is dispositive.⁵

Methodology and Preliminary Results

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and representatives of the Mexican tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Agreement, which suspended the underlying AD investigation, on September 19, 2019. Pursuant to the 2019 Agreement, the Mexican Signatories agreed to sell subject merchandise at or above certain minimum reference prices, and that their pricing would eliminate at least 85 percent of the dumping determined in the AD investigation.⁶ The Mexican signatories also agreed to other conditions, including quarterly audits,⁷ near-the-border inspections by the U.S. Department of Agriculture on all Round and Roma tomatoes and certain other types of tomatoes beginning on April 4, 2020,⁸ and limits to adjustments to the sales price due to certain changes in condition and quality after shipment.⁹

After reviewing the information received to date from the respondent companies in their questionnaire and supplemental questionnaire responses, we preliminarily determine that the respondents have adhered to the terms of the 2019 Agreement, except for certain instances of inconsequential and/or inadvertent noncompliance that do not materially frustrate the purposes of the 2019 Agreement. We also preliminarily determine that the 2019 Agreement functioned as intended and that the 2019 Agreement continued to meet the statutory requirements under sections 734(c) and (d) of the Act during the POR.

For a full description of the analysis underlying our conclusions, *see* the Preliminary Decision Memorandum. Commerce examines issues involving the discussion of proprietary

information concerning each of the respondents in separate memoranda which we incorporate into the Preliminary Decision Memorandum.¹⁰ A list of topics discussed in the Preliminary Decision Memorandum is included 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>.

Public Comment

Case briefs are due 30 days from the publication of these preliminary results in the **Federal Register**. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs 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.¹² All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.¹⁴ Requests should contain the party’s name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to

¹ The Mexican Grower Associations include: Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, Asociación de Productores de Hortalizas del Yaqui y Mayo and Sistema Producto Tomate (collectively, Mexican Growers Associations). Members of the Mexican Grower Associations are Signatories to the 2019 Agreement (Mexican Signatories).

² *See Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Agreement).

³ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 66275 (November 3, 2022).

⁴ *See Memorandum, “Respondent Selection,”* dated January 30, 2023.

⁵ For a complete description of the scope of the 2019 Agreement, *see* Memorandum, “Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review: Fresh Tomatoes from Mexico,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ *See 2019 Agreement*, 84 FR at section VI.

⁷ *Id.*, 84 FR at section VII.B.7.

⁸ *Id.*, 84 FR at section VII.C.; *see also* Memorandum, “Frequently Asked Questions Regarding Inspections,” dated March 17, 2020.

⁹ *See 2019 Agreement*, 84 FR 49996, at Appendix D.

¹⁰ *See* Memoranda, “Preliminary Analysis of Proprietary Information and Argument Regarding Valores Hortícolas del Pacífico S.A. de C.V.,” and “Preliminary Analysis of Proprietary Information and Argument Regarding Ceuta Produce S. de R.L. de C.V.,” both dated concurrently with this notice.

¹¹ *See* 19 CFR 351.309(d)(1).

¹² *See* 19 CFR 351.309(c)(2) and (d)(2).

¹³ *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁴ *See* 19 CFR 351.310(c).

those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Scope of the 2019 Agreement
- III. Background
- IV. Preliminary Results of Review
- V. Discussion of the Methodology
- VI. Recommendation

[FR Doc. 2023–22367 Filed 10–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: U.S. Environmental Technologies Business Development Mission to IFAT (Internationale Fachausstellung fuer Abwasser Technologie)—May 8–15, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce

Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6397 or email Jeffrey.Odum@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify and agree to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;

- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;

- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a “small business” under the Small Business Administration’s (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards>) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

U.S. Environmental Technologies Business Development Mission to IFAT—May 8–15, 2024

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing an Environmental Technologies Business Development Mission to the IFAT environmental technologies trade show in Munich, Germany, from May 13–15, 2024, with an optional program to the Czech Republic and Slovakia from May 8–10, 2024.

The U.S. Environmental Technologies Trade Mission to IFAT will promote U.S. exports in a range of environmental technology industries, including water and wastewater management, solid waste management and recycling, and air pollution monitoring and control. The trade mission will take place directly preceding and alongside the IFAT trade show in Munich, Germany—the largest trade show in the world for environmental technologies. The trade mission will introduce participants to commercial opportunities in the region and connect them with prospective partners, distributors, service providers, end-users, and foreign government decision makers who are seeking U.S. environmental solutions. Participating in an official U.S. industry delegation, rather than traveling to IFAT individually, will enhance the participants’ ability to secure key

business and government meetings where applicable and to promote their goods and services to a wider, more targeted, audience.

Participation in the trade mission will include entrance tickets to IFAT for one delegate from each participating company and tailored assistance to help delegates connect with participating international buyers from across Europe and other foreign markets. IFAT presents a unique opportunity for participants to learn more about the European market, gain awareness of trends and innovation in the environmental technologies sector, and meet with prospective business partners and customers from across the globe. IFAT is a large show, with 18 exhibition halls, an outside live demonstration area, thematic solutions tours centered around specific technologies and topics, and a start-up area to spotlight innovative technologies. In 2022, the show attracted 119,000 visitors from 155 countries and regions and hosted nearly 3,000 exhibitors. The show also includes a robust conference program, and along with its innovation spotlights and live demonstrations, is a leading venue in showcasing the latest trends and emerging issues in the environmental technologies sector.

Trade mission participants will receive assistance in tailoring a schedule that will allow them to target the components of the show that are of most interest to them and connect with potential business partners in various markets in Europe. Participants will also be able to participate in exclusive trade mission programming such as networking receptions, briefings with U.S. Embassy staff, promotional events, and ad-hoc meetings with potential business partners on the show floor.

The trade mission will include an optional program to Slovakia and the Czech Republic the week before IFAT for participants interested in exploring opportunities in those markets via business-to-business matchmaking meetings and meetings with relevant public sector entities to learn about commercial opportunities in water, wastewater treatment, solid waste management and recycling, and air pollution monitoring and control.

According to Environment Business International, the European market for environmental goods and services was valued at \$387 billion in 2022.

Best Prospects

The below list, while not exhaustive, identifies key products, services, and technologies that would be an appropriate fit for the trade mission. ITA is committed to assembling a trade mission delegation that is representative of a broad range of environmental technology sectors.

- Water and wastewater treatment equipment and services
- Waste management & recycling equipment and services
- Hazardous waste management
- Environmental remediation
- Environmental monitoring & instrumentation
- Waste-to-energy solutions
- Digital solutions for wastewater treatment, solid waste management, and other environmental systems
- Air pollution monitoring and control technologies
- Coastal and flood protection

Other Products and Services

Applications from companies exporting products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Commercial Service office to learn about other business development missions and services that may provide more targeted export opportunities. Companies may visit <https://www.trade.gov/contact-us> to obtain such information. This information also may be found on the website: <https://www.trade.gov/>.

Proposed Timetable

** Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

May 8–15, 2024

Wednesday, May 8, 2024	• Companies participating in optional program arrive in Bratislava via Vienna. • No evening programming due to state holiday.
Thursday, May 9, 2024	• Market Briefing on opportunities in Slovakia. • One-on-one business matchmaking meetings. • Networking Reception. • Plenary meeting with public sector and/or industry association. • Transport to Prague (train).

Friday, May 10, 2024	• Market Briefing on opportunities in Czech Republic. • One-on-one business matchmaking meetings. • Networking Reception. • Plenary meeting with public sector and/or related industry association. • Site visit to be requested.
Saturday–Sunday, May 11–12, 2024	• Transport to Munich (train or air).
Monday, May 13, 2024	• <i>Official Trade Mission Program Commences.</i> • IFAT and Trade Mission programming. • Reception at the State Chancery.
Tuesday, May 14, 2024	• IFAT and Trade Mission programming. • Networking Breakfast.
Wednesday, May 15, 2024	• IFAT and Trade Mission programming. • <i>Official Trade Mission Program Concludes. Delegates may choose to continue attending IFAT throughout the week or depart.</i>

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and maximum of 15 firms and/or trade associations will be selected to participate in the core mission at IFAT in Munich, Germany on a rolling basis. When applying to the mission, applicants will be able to indicate their interest in participating in the optional program to Czech Republic and Slovakia. A minimum of 3 and maximum of 5 firms and/or trade associations will be selected to participate in the optional program based on their expressed interest and market suitability.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the U.S. Environmental Technologies Business Development Mission will be \$850 for SMEs and \$1,600 for large firms or trade associations. The fee to participate in the optional program to Czech Republic and Slovakia will be \$2,350 for SMEs and \$5,000 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) to participate in any portion of the mission is \$1,000. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee above is required. Upon notification of

acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government-negotiated rates for hotel rooms during the optional program to Czech Republic and Slovakia. Due to high demand for hotel space in Munich during the IFAT show, participants may not have access to U.S. Government-negotiated rates for that portion of the mission. Applicants who are selected to the trade mission before December 15, 2023 may be able to participate in the U.S. Department of Commerce's reserved block of hotel rooms in Munich, Germany. Applicants selected after this date will be responsible for arranging their own accommodation in Munich. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the

safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any questions regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce web page and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 12, 2024. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after January 12, 2024, will be considered only if space and scheduling constraints permit. Due to high demand in Munich around the

IFAT show, hotel space is extremely limited and prospective applicants are encouraged to apply as early as possible to ensure available hotel rooms.

Contacts

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Gemal Brangman,

Director, Trade Events Management Task Force.

[FR Doc. 2023-22397 Filed 10-6-23; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the

scope ruling applications listed below in the month of August 2023.

DATES: Applicable October 10, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-1384.

SUPPLEMENTARY INFORMATION:

Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of August 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.¹ This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at <https://access.trade.gov>.

Scope Ruling Applications

Passenger Vehicle and Light Truck Tires from Thailand (A-549-842); certain light truck spare tires;²

¹ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) ("It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.")

² The product is a light truck spare tire with a 255/80R17 size designation, a "temporary use only" molding on the sidewall, and a tread depth no greater than 6.2 mm. The product does not have a

produced in and exported from Thailand; submitted by Maxxis International (Thailand) Co. Ltd.; August 7, 2023; ACCESS scope segment "Maxxis International."

Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (China) (A-570-910/C-570-911); 15 models of torque tubes (torque tubes);³ produced in and exported from China; submitted by Nextracker LLC (Nextracker); August 11, 2023; ACCESS scope segment "15 Models of Torque Tubes—2023."

Glycine from India, Japan, Thailand, and China (A-533-883/C-533-884/A-588-878/A-549-837/C-570-081); calcium glycinate;⁴ produced in and exported from India, Japan, Thailand, and China; submitted by GEO Speciality Chemicals, Inc. (GEO); August 14, 2023; ACCESS scope segment "Calcium Glycinate."

Common Alloy Aluminum Sheet from Germany (A-428-849); heat-treatable clad aluminum aircraft sheet, Aluminum Association series 2XXX (viz., 2024) and 7XXX (viz., 7075) (Aircraft Sheet);⁵ produced in and exported from Germany; submitted by Capps Manufacturing Inc. (Capps); August 31, 2023; ACCESS scope segment "Heat-Treatable Aluminum Aircraft Sheet."

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In

Uniform Tire Quality Grade Standard rating molded on the sidewall.

³ The products are welded carbon quality steel tubes that are mechanical tubing designed and used as drive shafts in solar tracking systems sold by Nextracker. The torque tubes have lengths ranging from 6.72m to 9.44m, wall thicknesses ranging from 2.5mm to 4mm, swaged ends with an outer diameter of 127mm, non-swaged ends with outer diameter of either 117mm or 119mm, 5 to 8 holes drilled on both ends of the tubes, and a total of 22 to 25 deburred holes drilled into the tubes, and out-of-straightness tolerances of 0.73mm/m to 0.83mm/m. The wall thickness and length tolerances of the torque tubes are either the same or more stringent than the corresponding tolerances contemplated by ASMT A513. The torque tubes are produced from high strength, low alloy steel.

⁴ The product is calcium glycinate (C4H8CaN2O4; CAS #35947-07-0), which is a precursor used in the manufacture of glycine. It is also used as a dietary supplement for humans and animals, as a pharmaceutical intermediate, and in cosmetic applications. Calcium glycinate is also known as calcium bisglycinate.

⁵ The product has a thickness of approximately 2.5mm and is available as follows: 110 in. wide, 94 in. wide by 154 in. long, and 88 in. wide by 224 in. long. The primary alloying element for the series 2xxx clad aluminum is a minimum of 3.8% copper to a maximum of 4.9% copper. The manganese tolerances are 0.30% to 0.9%. The primary alloying element for series 7xxx clad aluminum is a minimum of 5.1% zinc to a maximum of 6.1% zinc. The manganese tolerances are 0.0% to 0.3%.

accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.⁶ Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.⁷ Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the "updated" 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the "updated" 30th day.⁸

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at https://access.trade.gov/help/Scope_Ruling_Guidance.pdf. Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry

and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.⁹

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to CommerceCLU@trade.gov.

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: October 3, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–22408 Filed 10–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2020–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that companies in the People's Republic of China (China) made sales of subject merchandise at less than normal value (NV) during the period of review (POR) September 10, 2020, through February 28, 2022.

DATES: Applicable October 10, 2023.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Dusten Hom, AD/CVD Operations, Office I, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477 and (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2023, Commerce published the preliminary results of this review in the **Federal Register** and invited interested parties to comment on those results.¹ For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.² Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order³

The products covered by the *Order* are certain corrosion inhibitors from China. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

¹ See *Certain Corrosion Inhibitors from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2020–2022*, 88 FR 20488 (April 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2020–2022 Administrative Review of the Antidumping Duty Order on Certain Corrosion Inhibitors from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See *Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 86 FR 14869 (March 19, 2021) (*Order*).

⁶ In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

⁷ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁸ This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on the comments received, we made no changes to the *Preliminary*

Results.⁴ For a more detailed discussion of the issues raised by parties, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated

weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." Accordingly, in the final results of review, we are assigning to the non-selected separate rate respondents an estimated weighted-average dumping margin based on the average of Anhui Trust Chem Co., Ltd.'s, and its affiliates (collectively Anhui), and Nantong Botao Chemical Co., Ltd.'s (Botao) rates weighted by their publicly available ranged U.S. sales values.

Final Results of the Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period September 10, 2020, through February 28, 2022:

Exporter	Weighted-average dumping margin (percent)
Anhui Trust Chem Co., Ltd	6.12
Nantong Botao Chemical Co., Ltd	14.66
Review-Specific Average Rate Applicable to the Following Companies:	
Gold Chemical Limited	9.95
Jiangyin Delian Chemical Co., Ltd	9.95
Kanghua Chemical Co., Ltd	9.95

Disclosure

Because we have not modified our analysis to the *Preliminary Results*, we are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for the final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce intends to determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), for Anhui and Botao, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is *de minimis* (i.e., less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties.

For all non-selected separate rate applicants subject to this review, we will instruct CBP to liquidate all entries of subject merchandise that entered the United States during the POR at the average of the rates calculated for Anhui and Botao as listed above. For entries of subject merchandise during the POR produced by Anhui and Botao for which they did not know their merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the China-wide rate if there is no rate for the intermediate company or companies involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise

entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies subject to this review will be the rate established in these final results of the review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin for the China-wide entity (i.e., 241.02 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter.⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

⁴ See *Preliminary Results*.

⁵ See *Order*, 86 FR at 14871.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Administrative Protective Order

This notice also 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(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Change Since the *Preliminary Results*
- V. Discussion of the Issues
 - Comment 1: Whether Commerce Incorrectly Valued Overhead Materials as Direct Materials
 - Comment 2: Whether Commerce Should Use the Initial Factors of Production (FOP) Database to Calculate Surrogate Values (SV)
 - Comment 3: Use of Financial Statements (FS) to Value Factory Overhead, Selling, General, and Administrative Expenses, and Profit
 - Comment 4: Whether Commerce Should Continue to Assign Separate Rate Status to Kanghua Chemical Co., Ltd. (Chuzhou Kanghua)
 - Comment 5: Whether Commerce Should Value Air Freight Based on International

Air Transport Association (IATA) or Malaysian Investment Development Authority (MIDA) Data
 Commerce 6: Whether Commerce Should Value Labor Rates Based on Malaysian International Labor Organization (ILOSTAT) Data Instead of European Union Statistics Service (EUROSTAT) Labor Data
 Commerce 7: Whether Commerce Should Offset Botao's AD Margin by the Double Remedy Pass Through Subsidies Calculated in the Companion Countervailing Duty (CVD) Proceeding
 Commerce 8: Whether Commerce's Application of the Cohen's *d* Test to Botao's U.S. Sales Is Supported by Law
 VI. Recommendation

[FR Doc. 2023-22407 Filed 10-6-23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-848]

Emulsion Styrene-Butadiene Rubber From Mexico: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Notice of Intent To Rescind, in Part; 2021-2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers/exporters of emulsion styrene-butadiene rubber (ESB rubber) from Mexico did not make sales at prices below normal value during the period of review (POR) September 1, 2021, through August 31, 2022. We also preliminarily find that Dynasol Elastomeros S.A. de C.V. (Dynasol Elastomeros) had no shipments during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0413.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2017, Commerce published in the **Federal Register** the antidumping duty order on ESB rubber from Mexico.¹ On November 3, 2022,

¹ See *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders*, 82 FR 42790 (September 12, 2017) (*Order*).

Commerce initiated an administrative review of the *Order*, in accordance with section 751(a) of the Tariff Act of 1930, as Amended (the Act).² We selected Negromex as the sole mandatory respondent in this review.³

On May 18, 2023, Commerce extended the deadline for issuance of the preliminary results until September 29, 2023.⁴ For a complete description of the events that followed the initiation of the review, see the Preliminary Decision Memorandum.⁵

Scope of the Order

The merchandise subject to the *Order* is ESB rubber from Mexico. For a complete description of the scope, see the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On November 4, 2022, we received a letter from Dynasol Elastomeros notifying Commerce that it had no exports, sales, or entries of subject merchandise during the POR.⁶ This certification was consistent with entry data obtained by Commerce.⁷ Therefore, we preliminarily determine that Dynasol Elastomeros had no shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice,⁸ we find that it is not appropriate to rescind the review with respect to Dynasol Elastomeros, but rather to complete the review and

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 66275 (November 3, 2022) (*Initiation Notice*). The *Initiation Notice* references the six companies for which the petitioner requested review: Continental Tires de Mexico S.A. de C.V. (Continental Tires); Dynasol Elastomeros; Dynasol LLC (Dynasol); Hyundai Glovis Mexico S. de R.L. de C.V. (Hyundai Glovis); Negromex; and Pirelli Neumaticos, S.A. de C.V. (Pirelli Neumaticos).

³ See Memorandum, "Respondent Selection," December 6, 2022.

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of the 2021-2022 Antidumping Duty Administrative Review," dated May 18, 2023.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order: Emulsion Styrene-Butadiene Rubber from Mexico; 2021-2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See Dynasol Elastomeros's Letter, "Notification of No Shipments," dated November 4, 2022.

⁷ Additionally, Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP), which is pending at this time.

⁸ See, e.g., *Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 84 FR 4046, 4047 (February 14, 2019), unchanged in *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019).

issue appropriate instructions to CBP based on the final results of this review.

Notice of Intent To Rescind the Review, in Part

Commerce initiated this review with respect to six companies, including Dynasol.⁹ However, because Dynasol is a U.S. importer, rather than a producer or exporter of subject merchandise, it is not eligible for review. Therefore, we are announcing our intent to rescind this review with respect to Dynasol.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We have calculated constructed export price 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 these preliminary results, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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>.

Rate for Non-Selected Companies

We did not select Continental Tires, Hyundai Glovis, and Pirelli Neumaticos for individual examination in this review. The Act and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair value (LTFV) investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any

zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

However, pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Negromex is the sole mandatory respondent in this administrative review, and its weighted-average dumping margin is zero. Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 0.00 percent in accordance with section 735(c)(5)(B) of the Act.

Preliminary Results of the Review

For these preliminary results, Commerce has calculated the following estimated weighted-average dumping margins for the period September 1, 2021, through August 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Industrias Negromex S.A. de C.V	0.00
Continental Tires de Mexico S.A. de C.V	0.00
Hyundai Glovis Mexico S. de R.L. de C.V	0.00
Pirelli Neumaticos S.A. de C.V ..	0.00

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. If Negromex's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales during the POR to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. If the Negromex's weighted-average dumping margin 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 Negromex for which the company 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 if there is no rate for the intermediate company(ies) involved in the transaction.¹⁰

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the review-specific average rate, as noted in the "Preliminary Results of the Review" section, above. If this rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.¹¹

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be equal to the weighted-average dumping margin established in the final results of this administrative 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 producers or exporters not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were 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 rate established for the

¹⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹¹ See section 751(a)(2)(C) of the Act.

⁹ See *Initiation Notice*, 87 FR at 66277.

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 19.52 percent, the all-others rate established in the LTFV investigation.¹² These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after publication of the preliminary results in the **Federal Register**.¹³ Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹⁴ 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.¹⁵ Case and rebuttal briefs should be filed using ACCESS,¹⁶ and must be served on interested parties. 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.¹⁷

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, filed electronically via ACCESS, within 30 days after the date of publication of this notice. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time. 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. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁸ Parties should confirm the date, time, and location of the

hearing two days before the scheduled date.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of any analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with section 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 29, 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. Intent to Rescind the Review, In Part
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2023–22369 Filed 10–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Final Determination of Covered Merchandise Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) exported from the Socialist Republic of

Vietnam (Vietnam) to the United States that were produced using fittings from the People's Republic of China (China) that undergo the first stage of production in China (rough fittings) and the second and third stages of production in Vietnam are not subject to the scope of the antidumping duty order on butt-weld pipe fittings from China based on the evidence on the record in this inquiry. Additionally, Commerce determines that butt-weld pipe fittings from China that undergo the first and second stages of production in China (unfinished fittings) and the third stage of production in Vietnam are subject to the scope of the antidumping duty order.

DATES: Applicable October 10, 2023.

FOR FURTHER INFORMATION CONTACT: Miranda Bourdeau, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2021.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 2023, Commerce published in the **Federal Register** the preliminary results of this covered merchandise inquiry, determining that: (1) Chinese-origin unfinished fittings that only underwent the final stage of three production stages (*i.e.*, finishing processes) in Vietnam are covered by the scope of the *Order*; and (2) Chinese-origin rough fittings that underwent both the second and third stages of production in Vietnam are not covered by the scope of the *Order*.¹ Commerce received comments from Norca Industrial Company, LLC (Norca)² and Tube Forgings of America, Inc., Mills Iron Works, Inc., and Hackney-Ladish, Inc. (collectively, the petitioners).³

For a complete description of the events that followed the *Preliminary Results*, see the Issues and Decision Memorandum.⁴ The Issues and Decision

¹ See *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Preliminary Results of Covered Merchandise Inquiry*, 88 FR 41075 (June 23, 2023) (*Preliminary Results*); see also *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 29702 (July 6, 1992) (*Order*).

² See Norca's Letter, "Norca Industrial Company, LLC Case Brief," dated June 28, 2023; see also Norca's Letter, "Norca Industrial Company, LLC Rebuttal Case Brief," dated July 3, 2023.

³ See Petitioners' Letter, "Petitioners' Case Brief," dated June 28, 2023; see also Petitioners' Letter, "Petitioners' Rebuttal Brief," dated July 3, 2023.

⁴ See Memorandum, "Decision Memorandum for the Final Results of Covered Merchandise Inquiry—

Continued

¹² See *Order*.

¹³ See 19 CFR 351.224(b).

¹⁴ See 19 CFR 351.309(d); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ See 19 CFR 351.303.

¹⁷ See *Temporary Rule*.

¹⁸ See 19 CFR 351.310(d).

Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is unfinished and finished butt-weld pipe fittings. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Merchandise Subject to the Covered Merchandise Inquiry

The products subject to this inquiry are rough and unfinished fittings originating in China and processed into butt-weld pipe fittings through two production scenarios in Vietnam.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this inquiry are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, see the Appendix to this notice.

Final Determination

We determine, pursuant to 19 CFR 351.227(e)(2), that rough fittings originating from China that undergo the second and third stages of production in Vietnam are not subject to the scope of the *Order*. Additionally, we find that unfinished fittings from China that undergo the third stage of production in Vietnam are subject to the scope of the *Order*. In reaching this determination, we relied on information placed on the record by Norca and the petitioners. For further discussion, see the Issues and Decision Memorandum.

Continuation of Suspension of Liquidation

As stated above, Commerce has made an affirmative finding that unfinished fittings originating from China that undergo the third stage of production in Vietnam, which were the subject of this referral from CBP, are subject to the scope of the *Order*. This affirmative in-scope finding applies on a country-wide

basis, regardless of the producer, exporter, or importer, to all products from the same country with the same relevant physical characteristics as the products at issue. Therefore, in accordance with 19 CFR 351.227(l)(3), for these products, Commerce will direct CBP to: (1) continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate; (2) suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after September 26, 2022, the date of publication of the notice of initiation of this covered merchandise inquiry in the **Federal Register**; and (3) suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to September 26, 2022, but after November 4, 2021.⁵

Customs and Border Protection Notification

In accordance with section 517(b)(4)(B) of the Act, we will notify CBP of the final results of this covered merchandise inquiry. Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of unfinished fittings from China that undergo the third stage of production in Vietnam entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

⁵ See *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Covered Merchandise Inquiry*, 87 FR 58310 (September 26, 2022).

Notification to Interested Parties

This notice is issued and published pursuant to section 517 of the Act and 19 CFR 351.227(e)(2).

Dated: September 29, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Description of Merchandise Subject to this Inquiry
- V. Discussion of the Issues
 - Comment 1: Whether Commerce Erred in Determining That Merchandise in Scenario 1 is Within the Scope of the *Order*
 - Comment 2: Whether Commerce Erred in Determining That Merchandise in Scenario 2 is Not Subject to the Scope of the *Order*
- VI. Recommendation

[FR Doc. 2023–22368 Filed 10–6–23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

The 47th Meeting of the U.S. Coral Reef Task Force

AGENCY: The Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of meeting; request for comments.

SUMMARY: NOAA and the Department of Interior (DOI) will hold the 47th meeting of the U.S. Coral Reef Task Force (USCRTF). NOAA and DOI will be accepting oral and written comments.

DATES: NOAA and DOI will hold a public meeting on Thursday, October 26, 2023, from 8:30 a.m. to 5 p.m. Eastern Time (ET) at the Westin Frenchman's Reef Hotel, 5 Estate Bakkeroe, St. Thomas 00802, U.S. Virgin Islands. Written comments must be received before 8 a.m. ET on October 25, 2023.

ADDRESSES: Comments may be submitted by the following methods:

Oral Comments: NOAA and DOI will accept oral comments at the meeting on Thursday, October 26, 2023, from 12:30 p.m. to 1 p.m. ET.

Email: Please direct written comments to Michael Lameier, NOAA, USCRTF Steering Committee Point of Contact,

EAPA Inv. 7335: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

NOAA Coral Reef Conservation Program, via email at michael.lameier@noaa.gov. In the subject heading of your email, please include “Written comments for the 47th U.S. Coral Reef Task Force Meeting”.

The oral and written comments NOAA and DOI receive are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the U.S. Coral Reef Task Force or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT:

Michael Lameier, NOAA USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, (410) 267-5673, michael.lameier@noaa.gov, or Liza Johnson, DOI USCRTF Steering Committee Executive Secretary, U.S. Department of Interior, (202) 255-9843, Liza_M_Johnson@ios.doi.gov, or visit the USCRTF website at <https://www.coralreef.gov>.

SUPPLEMENTARY INFORMATION: The meeting provides a forum for coordinated planning and action among Federal agencies, State and Territorial governments, and non-governmental partners. Registration is requested to participate in the meeting. This meeting has time allotted for public oral comment from 12:30 p.m. to 1 p.m. ET. A written summary of the meeting will be posted on the USCRTF website within two months of occurrence. For more information about the meeting, registering for the meeting, and submitting public comments, visit <https://www.coralreef.gov>. During the oral comment period, commenters are encouraged to address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Authority: 16 U.S.C. 6451 *et seq.*; E.O. 13089, 63 FR 32701.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023-22329 Filed 10-6-23; 8:45 am]

BILLING CODE 3510-08-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, October 11, 2023—10:00 a.m. (See **MATTERS TO BE CONSIDERED** for each meeting).

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meetings—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matter (postponed from October 4, 2023): Notice of Proposed Rulemaking—Safety Standard for Infant Rockers and Infant/Toddler Rockers.

Decisional Matter: Notice of Proposed Rulemaking—Safety Standard for Residential Gas Furnaces and Boilers.

Briefing Matter: FY 2024 Operating Plan.

A live webcast of the meetings can be viewed at the following link: <https://cpsc.webex.com/weblink/register/rcba2daff690fcdabc61d969fd800c6446>.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: October 4, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023-22449 Filed 10-5-23; 11:15 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Negotiation of a Reciprocal Defense Procurement Agreement With the Republic of India

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for public comments.

SUMMARY: On behalf of the U.S. Government, DoD is contemplating negotiating and concluding a new Reciprocal Defense Procurement Agreement with the Republic of India. DoD is requesting industry feedback regarding its experience in public defense procurements conducted by or on behalf of the Indian Ministry of Defence or Armed Forces.

DATES: Comments must be received November 9, 2023.

ADDRESSES: Submit comments by email to gregory.d.snyder.civ@mail.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Snyder, telephone +1-571-217-4920.

SUPPLEMENTARY INFORMATION: DoD has concluded Reciprocal Defense Procurement (RDP) Agreements with 28 qualifying countries, as defined in the Defense Federal Acquisition Regulation Supplement (DFARS) 225.003, at the level of the Secretary of Defense and his counterpart. The purpose of an RDP Agreement is to promote rationalization, standardization, interchangeability, and interoperability of conventional defense equipment with allies and other friendly governments. These Agreements provide a framework for ongoing communication regarding market access and procurement matters that enhance effective defense cooperation.

RDP Agreements generally include language by which the Parties agree that their defense procurements will be conducted in accordance with certain implementing procedures. These procedures relate to—

- Publication of notices of proposed purchases;
- The content and availability of solicitations for proposed purchases;
- Notification to each unsuccessful offeror;
- Feedback, upon request, to unsuccessful offerors concerning the reasons they were not allowed to participate in a procurement or were not awarded a contract; and
- Provision for the hearing and review of complaints arising in connection with any phase of the procurement process to ensure that, to the extent possible, complaints are equitably and expeditiously resolved.

Based on the Agreement, each country affords the other country certain benefits on a reciprocal basis consistent with national laws and regulations. The benefits that the United States accords to the products of qualifying countries include—

- Offers of qualifying country end products are evaluated without applying the price differentials otherwise required by the Buy American statute and the Balance of Payments Program;
- The chemical warfare protection clothing restrictions in 10 U.S.C. 4862 and the specialty metals restriction in 10 U.S.C. 4863 do not apply to products manufactured in a qualifying country; and
- Customs, taxes, and duties are waived for qualifying country end products and components of defense procurements.

If DoD (for the U.S. Government) concludes a new RDP Agreement with the Republic of India and DoD executes

a blanket public interest determination, as intended, India will be listed as one of the qualifying countries at DFARS 225.872-1(a).

While DoD is evaluating India's laws and regulations in this area, DoD would benefit from U.S. industry's experience in participating in Indian public defense procurements. DoD is, therefore, asking U.S. firms that have participated or attempted to participate in procurements by or on behalf of India's Ministry of Defence and Armed Forces to let us know if the procurements were conducted with transparency, integrity, fairness, and due process in accordance with published procedures, and if not, the nature of the problems encountered.

DoD is also interested in comments relating to the degree of reciprocity that exists between the United States and India when it comes to the openness of defense procurements to offers of products from the other country. Further, DoD would like to understand the degree to which U.S. industry feels that it would have equal and proportional access to the Indian market as India would have under an RDP Agreement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023-22429 Filed 10-6-23; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-OS-0083]

Joint Rules of Appellate Procedure for Courts of Criminal Appeals; Proposed Changes

AGENCY: Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP) Committee, Department of Defense.

ACTION: Notice of availability; changes to the JRAP.

SUMMARY: This notice announces proposed changes to the JRAP, which prescribe uniform rules of procedure for Courts of Criminal Appeals. Although these rules of practice and procedure fall within the Administrative Procedure Act's exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented. The proposed changes are a refinement of the JRAP effective January 1, 2019 and implement statutory changes expanding the

jurisdiction of Courts of Criminal Appeals and creating special trial counsel. The approval authorities for these changes are the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard.

DATES: Comments on the proposed changes must be received no later than November 9, 2023.

ADDRESSES: The changes to the JRAP are available for review on *Regulations.gov* in docket DoD-2023-OS-0083. You may submit comments, identified by docket number and title by any of the following methods:

- *Federal eRulemaking Portal:*

<https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

- *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Christopher Robin Jaramillo, (202) 685-7695, christopher.r.jaramillo@uscg.mil.

SUPPLEMENTARY INFORMATION: The National Defense Authorization Act (NDAA) for Fiscal Year 2022 included several significant amendments to the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 801 *et seq.* Regarding military appellate practice the NDAA:

- Added 10 U.S.C. 824a, creating the Office of the Special Trial Counsel, with exclusive authority over certain victim-centric offenses, known as "covered offenses."

- Amended 10 U.S.C. 866 to expand the jurisdiction of the Courts of Criminal Appeals to all courts-martial resulting in a guilty verdict.

The Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP) Committee convened and suggested numerous changes to the JRAP, both to reflect these changes to the UCMJ and to clarify several issues that have been raised by practitioners

since the previous version of the JRAP became effective on January 1, 2019.

Beyond incorporating the role of the Office of the Special Trial Counsel in appellate procedure, some of the more significant changes to the JRAP include:

- Changes to Rule 5 to reflect the Courts' expanded jurisdiction.
- Changes to Rule 6 to reflect what the record on appeal will be for the new types of appeals.
- Changes to Rule 16 to clarify procedures for waiver or withdrawal of appellate review.
- Changes to Rule 18:
 - To expand on what is required for *pro se* filings; and
 - To create procedures for new types of appeals under the Courts' expanded jurisdiction.
- Changes to Rule 23 to clarify when the Court will consider factual material not otherwise in the record.
- Changes to Rule 31 to clarify what is required for a Motion for Reconsideration.

Public Participation and Request for Comments

Public participation is essential to effective governance and all comments and material received during the comment period will be considered. Your comment can help shape the outcome of the changes to the JRAP. If you submit a comment, please include the docket number for this document, indicate the specific section of this JRAP to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. You may submit comments through the Federal Docket Management Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type DoD-2023-OS-0083 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 the JRAP mentioned in this notice of availability 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 the 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 notice of availability, you should see a “Subscribe” option for email alerts. This option will notify you when comments are posted, or the final JRAP is published. All comments received will be reviewed, but only comments that address the topic of the changes to the JRAP will be posted. Off-topic, inappropriate, or duplicate comments may not be posted.

Personal Information

Comments posted to <https://www.regulations.gov> may include any personal information you have provided. As a matter of practice, DoD’s Regulatory Directorate does not post personal information to the *Regulations.gov* public website. DoD’s Regulatory Directorate will pass submitter personal information to the government points-of-contact for this action so they may follow-up on comments for more clarity or additional information. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

Dated: October 3, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–22364 Filed 10–6–23; 8:45 am]

BILLING CODE 6001–FR–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities; Help America Vote College Program Application Kits

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; request for comment.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the information collection EAC Help America Vote College Program (HAVCP) Poll Worker and Service Day Mini-grant Program Applications.

DATES: Comments must be received by 5 p.m. Eastern on Monday, November 6, 2023.

ADDRESSES: To view the proposed EAC HAVCP application forms and reporting

instruments, see: <https://www.eac.gov/grants/help-america-vote-college-program>. For information on the Application kits, contact Tina Bateman, Office of Grants Management, Election Assistance Commission, HAVCP@eac.gov. All requests and submissions should be identified by the title of the information collection.

Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

SUPPLEMENTARY INFORMATION:

Previously filed under Title and OMB Number: Help America Vote College Program Application Kit; 88 FR 47133 (Page: 47133–47134; Document Number: 2023–15506).

Purpose

This proposed information collection was previously published in the **Federal Register** on July 21, 2023 and allowed 60 days for public comment as described above. The purpose of this notice is to allow 30 days for public comment from all interested individuals and organizations. In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act (PRA) of 1995, EAC has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The purpose of this notice is to allow an additional 30 days for public comment from all interested individuals and organizations.

The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent to Congress, negotiates indirect cost rates with grantees, and resolves audit findings on the use of Help America Vote Act of 2002 (HAVA) funds.

The U.S. Election Assistance Commission (EAC) anticipates the availability of \$1 million dollars in discretionary grant funding to support the Help America Vote College Program (HAVCP). The HAVCP grant competition is split into two separate grant programs: the HAVCP Poll Worker Grant and the HAVCP Service Day Mini-Grant. Applicant organizations may only apply for one of the two programs. The purpose of the HAVCP Poll Worker Grant is to encourage college students to

assist state and local governments in the administration of elections by serving as nonpartisan poll workers or assistants, and to encourage jurisdictions to utilize these efforts. The purpose of the HAVCP Service Day Mini-Grant is to elevate civic participation on college campuses through a day of service and inspire college students to volunteer their time and talents to ensure safe, secure, accessible, and transparent elections. Each program within the EAC Help America Vote College Program has a tailored set of application packages and progress reports based on the needs and aims of the program. A list of documents covered in this information collection for each program is included below.

Poll Worker Grant Program

- HAVCP Poll Worker Application Form and Guidance
- HAVCP Poll Worker Budget Worksheet and Guidance
- HAVCP Poll Worker Progress Report

Service Day Mini-Grant Program

- HAVCP Service Day Mini-Grant Application Form and Guidance
- HAVCP Service Day Mini-Grant Progress Report

These application packages provide the instruments necessary to collect competitive applications with program-specific information necessary for the College Program. Supporting guidance and instructions are included as applicant resources and to reduce the administrative burden of applying for federal funds.

Public Comments

We are soliciting public comments to permit the EAC to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Office of Grants Management.
- Evaluate the accuracy of our estimate of 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.

OMB approval is requested for 3 years.

Respondents: Eligible applicants and relevant stakeholders: Public and

Private Institutions of Higher Education (including Community Colleges), State

and Local Election Offices, Non-Profit Organizations, and College Students.

Annual Reporting Burden

ANNUAL BURDEN ESTIMATES

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
HAVCP Poll Worker Grant	Application and Guidance	50	1	10	500
HAVCP Poll Worker Grant	Budget Worksheet and Instructions	50	1	7	350
HAVCP Poll Worker Grant	Progress Report	20	2	1	40
HAVCP Service Day Mini-Grant	Application and Guidance	40	1	5	200
HAVCP Service Day Mini-Grant	Progress Report	20	1	1	20
Total					1,110

The estimated cost of the annualized cost of this burden is: \$26,762.10, which is calculated by taking the annualized burden (1,110 hours) and multiplying by an hourly rate of \$24.11 (GS-8/Step 5 hourly basic rate).

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023-22403 Filed 10-6-23; 8:45 am]

BILLING CODE 4810-71-P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before December 11, 2023. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Bonneville Power Administration, Attn: Stephanie Noell, Privacy Program, CGI-7, P.O. Box 3621, Portland, OR 97208-3621, or by email at privacy@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie Noell, Privacy Program, CGI-7, P.O. Box 3621, Portland, OR 97208-3621, (503) 230-3881, or privacy@bpa.gov.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910-NEW;

(2) *Information Collection Request Title:* Federal Columbia River Power System (FCRPS) Cultural Resources Program Client Survey;

(3) *Type of Request:* New;

(4) *Purpose:* The survey will solicit feedback from stakeholders (including federal, Tribal, and state organizations) regarding communication within the program and goals for the future efforts of the program to be used for planning purposes;

(5) *Annual Estimated Number of Respondents:* 42;

(6) *Annual Estimated Number of Total Responses:* 42;

(7) *Annual Estimated Number of Burden Hours:* 21;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$1,062.

Statutory Authority: The Bonneville Project Act codified in 16 U.S.C. 832a, Department of Energy Establishment Act 42 U.S.C. 7101 *et seq.*, and the National Historic Preservation Act 36 CFR part 800.

Signing Authority

This document of the Department of Energy was signed on September 25, 2023, by Rachel L. Hull, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 4, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-22379 Filed 10-6-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-546-000]

El Paso Natural Gas Company, L.L.C.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 22, 2023, El Paso Natural Gas Company, L.L.C. (EPNG) filed a prior notice request for authorization, in accordance with sections 157.205, 157.208 and 157.210, of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Discovery's blanket certificate

issued in Docket No. CP82-435-000,¹ to install an approximate two-mile 30-inch outside diameter pipeline loop extension, located in Hudspeth County, Texas (Line No. 1110 Loop Project). Specifically, the Project is designed to create incremental year-round firm natural gas transportation capacity of approximately 20,021 dekatherms per day on EPNG's Line No. 1100 system. The estimated cost for the Project is \$9,900,000, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (www.ferc.gov) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at FercOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions concerning this request should be directed to: Francisco Tarin Director, Regulatory, El Paso Natural Gas Company, L.L.C., Two North Nevada Avenue, Colorado Springs, Colorado 80903, or call (719) 667-7515, or via email to francisco_tarin@kindermorgan.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 1, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and

assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,² any person³ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁴ and must be submitted by the protest deadline, which is December 1, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁵ and the regulations under the NGA⁶ by the intervention deadline for the project, which is December 1, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

² 18 CFR 157.205.

³ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁴ 18 CFR 157.205(e).

⁵ 18 CFR 385.214.

⁶ 18 CFR 157.10.

www.ferc.gov/resources/guides/how-to-intervene.asp.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 1, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23-546-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁷

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23-546-000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory

⁷ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

¹ *El Paso Natural Gas Company, L.L.C.*, 20 FERC ¶ 62,454 (1982).

Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Francisco Tarin Director, Regulatory, El Paso Natural Gas Company, L.L.C., Two North Nevada Avenue, Colorado Springs, Colorado 80903, or call (719) 667-7515, or via email to francisco_tarin@kindermorgan.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: October 2, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22345 Filed 10-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2842-045 and 2952-073]

Idaho Falls Power; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of 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 a New License and Commencing Pre-filing Process.

b. *Project Nos.:* 2842-045 and 2952-073.

c. *Dated Filed:* August 2, 2023.

d. *Submitted By:* Idaho Falls Power.

e. *Name of Project:* Idaho Falls Hydroelectric Project, Gem State Hydroelectric Project.

f. *Location:* On the Snake River, in Bonneville and Bingham Counties, Idaho. The project occupies Federal lands under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Richard Malloy, Regulatory Compliance Manager, Idaho Falls Power, 140 S Capital Avenue, Idaho Falls, ID 83402.

i. *FERC Contact:* Matt Cutlip at (503) 552-2762 or email at matt.cutlip@ferc.gov.

j. *Cooperating agencies:* Federal, State, local, and Tribal 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 the U.S. Fish and Wildlife Service and National Marine Fisheries Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and National Marine Fisheries Service under section 305(b) of the Magnuson-Stevens Fishery Management and Conservation Act and implementing regulations at 50 CFR part 600.920. We are also initiating consultation with the Idaho 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 part 800.2.

l. With this notice, we are designating Idaho Falls Power as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act, the Magnuson-Stevens Fishery Management and Conservation Act, and section 106 of the National Historic Preservation Act.

m. Idaho Falls Power filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR part 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 toll-free, (866) 208-3676 or TTY, (202) 502-8659.

You may register online at <https://ferconline.ferc.gov/FERConline.aspx> to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

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, and 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 <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. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any

other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2842-045 or P-2952-073, as appropriate.

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 November 30, 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.

q. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an environmental assessment or environmental impact statement.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, October 26, 2023.

Time: 9 a.m. (MDT).

Location: Hilton Garden Inn—South Fork River Meeting Room, 700 Lindsay Boulevard, Idaho Falls, ID 83402.

Phone: 208-522-9500.

Evening Scoping Meeting

Date: Thursday, October 26, 2023.

Time: 7 p.m. (MDT).

Location: Hilton Garden Inn—South Fork River Meeting Room, 700 Lindsay Boulevard, Idaho Falls, ID 83402.

Phone: 208-522-9500.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. 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, identified through the scoping process.

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the project on Wednesday, October 25, 2023, starting at 1 p.m. (MDT).

All interested individuals, agencies, tribes, and NGOs are invited to attend. All participants are responsible for their own transportation to/from the project and during the site visit. Participants should meet at 1 p.m. at the Idaho Falls Power offices at 140 S Capital Avenue, Idaho Falls, ID 83402. Please contact Richard Malloy with Idaho Falls Power at (208) 612-8428, or via email at rmalloy@ifpower.org, on or before October 13, 2023, if you plan to attend the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (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 appropriateness of any Federal or State agency or Indian Tribe acting 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

Commission staff are moderating the scoping meetings. The meetings are recorded by an independent stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: October 2, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22346 Filed 10-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP23-543-000, CP23-544-000, CP23-545-000]

Bison Pipeline LLC, Northern Border Pipeline Company, Wyoming Interstate Company, LLC, Fort Union Gas Gathering, LLC; Notice of Applications and Establishing Intervention Deadlines

Take notice that on September 15, 2023, Bison Pipeline LLC (Bison), 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, filed an application, in Docket No. CP23-543-000, under section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations requesting authorization to abandon 300,000 dekatherms per day (Dth/day) of existing unsubscribed capacity by lease to Wyoming Interstate Company, LLC (WIC) pursuant to the terms of a capacity lease agreement between Bison and WIC.

Also, take notice that on September 15, 2023, Northern Border Pipeline Company (Northern Border), 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, filed an application, in Docket No. CP23-544-000, under sections 7(b) and 7(c) of the NGA and part 157 of the Commission's regulations requesting authorization for its Bison XPress Project, located in McKenzie, Dunn, and Morton Counties, North Dakota. The proposed Bison XPress Project consists of the replacement and expansion of compression facilities at Northern

Border's existing Arnegard, Manning, and Glen Ullin Compressor Stations. The Project will improve system reliability and provide 300,000 Dth/day of incremental capacity, which Northern Border will lease to WIC. The total estimated cost of constructing the Bison XPress Project is approximately \$555 million.

Finally, take notice that on September 18, 2023, WIC, Post Office Box 1087, Colorado Springs, Colorado, 80944, and Fort Union Gas Gathering, LLC (FUGG), 569 Brookwood Village, Suite 749, Birmingham, Alabama 35209 filed a joint application, in Docket No. CP23–545–000, under section 7(c) of the NGA and part 157 of the Commission's regulations requesting authorization for WIC to lease 300,000 Dth/day of capacity on the Northern Border, Bison, and FUGG pipeline systems. Additionally, FUGG requests a limited jurisdiction certificate authorizing it to allow WIC to transport interstate natural gas on FUGG's gathering system without subjecting FUGG's gathering operations to the Commission's NGA jurisdiction, all as more fully set forth in these applications which are on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (www.ferc.gov) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at FercOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed projects in Docket Nos. CP23–543–000 and CP23–544–000 should be directed to David A. Alonzo, Manager, Project Authorizations, Bison Pipeline LLC and Northern Border Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, by phone at (832) 320–5477, or by email at david_alonzo@tcenergy.com. Any questions regarding the proposed project in Docket No. CP23–545–000 should be directed to Francisco Tarin, Director, Regulatory, Wyoming Interstate Company, LLC, Post Office Box 1087, Colorado Springs, Colorado 80944, by phone at (719) 667–7517, or by email at WICregulatoryaffairs@kindermorgan.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 23, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before October 23, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket numbers CP23–543–000, CP23–544–000, and CP23–545–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket numbers (CP23–543–000, CP23–544–000, and CP23–545–000).
To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

¹ 18 CFR (Code of Federal Regulations) 157.9.

available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is October 23, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket numbers CP23–543–000, CP23–544–000, and CP23–545–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov)

under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket numbers CP23–543–000, CP23–544–000, and CP23–545–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email at: David A. Alonzo, Manager, Project Authorizations, Bison Pipeline LLC and Northern Border Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or at david_alonzo@tcenergy.com, and to Francisco Tarin, Director, Regulatory, Wyoming Interstate Company, LLC, Post Office Box 1087, Colorado Springs, Colorado 80944, or at WICregulatoryaffairs@kindermorgan.com.

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to

factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on October 23, 2023.

Dated: October 2, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–22350 Filed 10–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2967–000]

Toms River Net Meter Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Toms River Net Meter Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426,

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 23, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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://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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (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: October 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-22402 Filed 10-6-23; 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: EC23-142-000.

Applicants: EF Oxnard LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of EF Oxnard LLC.

Filed Date: 9/29/23.

Accession Number: 20230929-5368.

Comment Date: 5 p.m. ET 10/20/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-1-000.

Applicants: Nova Power, LLC.

Description: Nova Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/3/23.

Accession Number: 20231003-5125.

Comment Date: 5 p.m. ET 10/24/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:.

Docket Numbers: EL23-122-000.

Applicants: Bottlebrush Solar Energy LLC and Pleasant Prairie Solar Energy LLC v. PJM Interconnection, L.L.C.

Description: Complaint of Bottlebrush Solar Energy LLC et al. v. PJM Interconnection, L.L.C.

Filed Date: 9/29/23.

Accession Number: 20230929-5360.

Comment Date: 5 p.m. ET 10/19/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-2449-001.

Applicants: Lyons Solar, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 10/1/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5058.

Comment Date: 5 p.m. ET 10/24/23.

Docket Numbers: ER24-11-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Oncor 6th A&R Interconnection Agreement to be effective 9/28/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5097.

Comment Date: 5 p.m. ET 10/24/23.

Docket Numbers: ER24-12-000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 405, Amendment No. 1 to be effective 12/3/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5101.

Comment Date: 5 p.m. ET 10/24/23.

Docket Numbers: ER24-13-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Citrus Flatts Energy Center Generation Interconnection Agreement to be effective 9/8/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5104.

Comment Date: 5 p.m. ET 10/24/23.

Docket Numbers: ER24-14-000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023-10-03 SA 3713 Termination of WAPA-OTF FCA (Devils Lake) to be effective 10/4/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5106.

Comment Date: 5 p.m. ET 10/24/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24-1-000.

Applicants: Baltimore Gas and Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Baltimore Gas and Electric Company.

Filed Date: 10/2/23.

Accession Number: 20231002-5377.

Comment Date: 5 p.m. ET 10/23/23.

Docket Numbers: ES24-2-000; ES24-3-000.

Applicants: Delmarva Power & Light Company, Potomac Electric Power Company, Delmarva Power & Light Company, Potomac Electric Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Delmarva Power & Light Company, et al.

Filed Date: 10/2/23.

Accession Number: 20231002-5378.

Comment Date: 5 p.m. ET 10/23/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: October 3, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-22400 Filed 10-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-1144-000.
Applicants: LA Storage, LLC.
Description: Annual Penalty Disbursement Report of LA Storage, LLC.
Filed Date: 9/29/23.
Accession Number: 20230929-5356.
Comment Date: 5 p.m. ET 10/11/23.
Docket Numbers: RP24-9-000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 10-2-2023 to be effective 10/1/2023.
Filed Date: 10/2/23.

Accession Number: 20231002-5246.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-10-000.
Applicants: Spire STL Pipeline LLC.
Description: § 4(d) Rate Filing: Spire STL Pipeline Annual LAUF Filing to be effective 11/1/2023.
Filed Date: 10/2/23.
Accession Number: 20231002-5250.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-11-000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: Normal filing 2023-7.26-4.4 to be effective 10/1/2023.
Filed Date: 10/2/23.
Accession Number: 20231002-5257.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-12-000.
Applicants: Roaring Fork Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Annual FL&U Reimbursement Percentage Filing to be effective 11/1/2023.
Filed Date: 10/2/23.
Accession Number: 20231002-5297.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-13-000.
Applicants: Spire STL Pipeline LLC.
Description: § 4(d) Rate Filing: Spire STL NRA Filing to be effective 11/1/2023.
Filed Date: 10/2/23.
Accession Number: 20231002-5321.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-14-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Vitol Inc. R-7495-14 to be effective 11/1/2023.
Filed Date: 10/3/23.
Accession Number: 20231003-5017.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-15-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Vitol Inc. R-7495-15 to be effective 11/1/2023.
Filed Date: 10/3/23.
Accession Number: 20231003-5020.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-16-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Vitol Inc. R-7495-16 to be effective 11/1/2023.
Filed Date: 10/3/23.
Accession Number: 20231003-5023.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-17-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Freepoint

Commodities LLC R-7250-46 to be effective 11/1/2023.

Filed Date: 10/3/23.
Accession Number: 20231003-5028.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-18-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Freepoint Commodities LLC R-7250-47 to be effective 11/1/2023.
Filed Date: 10/3/23.
Accession Number: 20231003-5033.
Comment Date: 5 p.m. ET 10/16/23.
Docket Numbers: RP24-19-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.3.23 Negotiated Rates—Freepoint Commodities LLC R-7250-48 to be effective 11/1/2023.
Filed Date: 10/3/23.
Accession Number: 20231003-5035.
Comment Date: 5 p.m. ET 10/16/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR21-18-001.
Applicants: Houston Pipe Line Company LP.
Description: Houston Pipe Line Company LP Certification of Unchg Rates to be effective N/A.
Filed Date: 10/3/23.
Accession Number: 20231003-5038.
Comment Date: 5 p.m. ET 10/24/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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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: October 3, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-22401 Filed 10-6-23; 8:45 am]

BILLING CODE 6717-01-P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Wednesday, October 18 from 4:00–4:30 p.m. EDT. A joint meeting of the EXIM Advisory Committee, Sub-Saharan Africa Advisory Committee, and EXIM Advisory Councils will be held from 4:00–4:30 p.m. EDT.

PLACE: The Washington Hilton Hotel, 1919 Connecticut Ave. NW, Washington, DC 20009 and Virtual. The meeting will be held in person for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

REGISTRATION AND PUBLIC COMMENT: Virtual Public Participation: The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *advisory@exim.gov*.

Interested parties may register for the meeting at: <https://events.teams.microsoft.com/event/5a102c27-d9ae-490d-a143-db0c4412029a@b953013c-c791-4d32-996f-518390854527>.

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist,

at 202-480-0062 or *india.walker@exim.gov*.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023-22457 Filed 10-5-23; 11:15 am]

BILLING CODE 6690-01-P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Wednesday, October 18, 2023, from 4:30–6:00 p.m. EDT.

PLACE: Washington Hilton Hotel, 1919 Connecticut Ave. NW, Washington, DC 20009.

STATUS: *Public Participation:* The meeting will be open to public participation and time will be allotted for questions or comments. Members of the public may also file written statements before or after the meeting to *external@exim.gov*. Interested parties may contact India Walker at *india.walker@exim.gov* to confirm attendance.

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202-480-0062 or at *india.walker@exim.gov*.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023-22455 Filed 10-5-23; 11:15 am]

BILLING CODE 6690-01-P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Wednesday, October 18th from 4:30 p.m.–6:00 p.m. EDT.

PLACE: Hybrid meeting—Washington Hilton Hotel, 1919 Connecticut Ave. NW, Washington, DC 20009 and Virtual. The meeting will be held in person for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

REGISTRATION AND PUBLIC COMMENT:

Virtual Public Participation: The meeting will be open to public participation virtually and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *advisory@exim.gov*.

Interested parties may register for the meeting at: <https://events.teams.microsoft.com/event/48ebe66f-b21f-441a-a0eb-e172d5c5f4c8@b953013c-c791-4d32-996f-518390854527>.

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202-480-0062 or *india.walker@exim.gov*.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023-22456 Filed 10-5-23; 11:15 am]

BILLING CODE 6690-01-P

EXPORT-IMPORT BANK

Privacy Act of 1974; New System of Records

AGENCY: Export Import Bank of the United States.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Export Import Bank of the United States ("EXIM", "EXIM Bank", or "The Bank") is proposing a new system of records notice ("SORN"). EXIM Bank is proposing a new system of records—EXIM AgilQuest. This new SORN will include the authorities for maintenance of the system, the purposes of the system, and the categories of entities and individuals covered by the system. The new system of records described in this notice, EXIM AgilQuest, will collect information for current employees and contractors of the Bank to support a hybrid (onsite & telework) working environment.

DATES: The system of records described herein will become effective October 10, 2023. The deadline to submit comments on this system of records, as well as the date on which the below routine uses will become effective, will be 30 days after **Federal Register** publication.

ADDRESSES: You may submit written comments to EXIM Bank by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the website instructions for submitting comments.

- *Email:* sorn.comments@exim.gov. Refer to SORN in the subject line.

- *Mail or Hand Delivery:* Address letters to the Freedom of Information Act Office and the Office of Information Management and Technology, Export Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

Commenters are strongly encouraged to submit public comments electronically. EXIM Bank expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Export Import Bank of the United States, or EXIM Bank) and reference this notice. Comments received will be posted without change to EXIM Bank's website. Do not submit comments that include any Personally Identifiable Information (PII) or confidential business information. Copies of comments may also be obtained by writing to the Freedom of Information Act Office and the Office of Information Management and Technology, Export Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: The Office of the General Counsel, Administrative Law Group at OGCAdminlaw@exim.gov, or by calling 202-565-3168, or by going to <https://www.exim.gov/about/freedom-information-act/privacy-act-requests/pia-notice-assessments>.

SUPPLEMENTARY INFORMATION: The new system of records described in this notice, EXIM AgilQuest, will store certain information of current employees and contractors of the Bank to support a hybrid (onsite & telework) working environment. The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (Dec. 2016) and the Privacy Act, 5 U.S.C. 552a(r).

SYSTEM NAME AND NUMBER:

System Name: EXIM AgilQuest,
System Number: N/A

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This electronic system will be used via a web interface and mobile application by the Export Import Bank of the United States, 811 Vermont Avenue NW, Washington, DC 20571. The physical location and technical operation of the system is at the FedRAMP Authorized Amazon Web Services (AWS) cloud services facility at 410 Terry Ave N, Seattle, WA 98109-5210.

SYSTEM MANAGER(S):

Tomeka Wray, Vice President of Operations, EXIM Bank, 811 Vermont Avenue NW, Washington, DC 20571, tomeka.wray@exim.gov, 202-565-3996.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*).¹ 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to facilitate the hybrid workforce environment by allowing EXIM employees and contractors to reserve agency workspaces such as "Touchdown Spaces", "Collaboration Spaces/Meeting Rooms", and Information Technology (IT) assets. The system will provide employees with increased flexibility and access to workspaces while providing the agency with space utilization information to make data-driven decisions for facilities operations and capital planning.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The EXIM AgilQuest system will contain information on EXIM current employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The EXIM AgilQuest system will contain Personally Identifiable Information (PII) of EXIM current employees and contractors, necessary to obtain an account and reserve workspaces relevant to their division and job functions. Records maintained in this system may contain employee and contractor information including, but not limited to, name, agency email address, agency phone number, location (*e.g.*, EXIM Headquarters or satellite location), and organization/division/office of assignment. Individuals may voluntarily provide additional contact information through the EXIM

AgilQuest online portal such as picture, preferred name, additional phone numbers, and EXIM work groups.

RECORD SOURCE CATEGORIES:

Information in this system is obtained using one of three methods: manual entry by an administrator user, direct database connection to supply the required information, and through employee or contractor entry of optional data to their individual profile.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside EXIM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Appropriate agencies, entities, and persons when (a) the Bank suspects or has confirmed that there has been a breach of the system of records; (b) the Bank has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bank (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bank's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. Another Federal agency or Federal entity, when the Bank determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

4. Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains.

5. Contractors or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the

¹ More specifically, sections 635(a)(1) and 635a(j)(1)(C) of the Export-Import Bank Act of 1945, as amended.

Bank or Federal Government and who have a need to access the information in the performance of their duties or activities.

6. The U.S. Department of Justice (DOJ) for its use in providing legal advice to the Bank or in representing the Bank in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bank to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest: (a) The Bank; (b) Any employee of the Bank in his or her official capacity; (c) Any employee of the Bank in his or her individual capacity where DOJ has agreed to represent the employee; or (d) The United States, where the Bank determines that litigation is likely to affect the Bank or any of its components.

7. A court, magistrate, or administrative tribunal during an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) during discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant and necessary to a proceeding, or in connection with criminal law proceedings.

8. Appropriate Federal, State, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the record indicates a violation or a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored digitally in encrypted format in the AgilQuest Amazon Web Services (AWS) FedRAMP authorized cloud environment. AgilQuest encrypts EXIM's sensitive information (such as employee or contractor first name, last name, and email address) at rest and stores it in Amazon Relational Database Service (RDS) AWS databases. Data in transit is encrypted via TLS. AgilQuest also leverages AWS Key Management Service (KMS) to encrypt data and restrict access based on user roles and job functions. AgilQuest complies with EXIM policy which stipulates that sensitive data generated from AgilQuest must be stored on EXIM's Microsoft OneDrive and SharePoint site that are managed and protected by EXIM's

Infrastructure General Support System administrative, technical, and physical controls.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by other users by using the employee's name. Records may be retrieved by administrator/superusers by the following: first or preferred name, last name, email address, Location (*e.g.*, Headquarters or satellite location), and user role. Information may additionally be retrieved by other personal identifiers by user account maintenance programs within the application.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are archived/disposed of during the routine data sync for individuals who are no longer employees or contractors of EXIM. Otherwise, records are maintained and destroyed in accordance with the National Archives and Record Administration's ("NARA") Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or an EXIM Bank records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information will be stored in electronic format within the AgilQuest Cloud Service Provider (CSP) Amazon Web Service (AWS). EXIM AgilQuest has configurable, layered user accounts and permissions features to ensure users have only the proper access necessary to perform their duties. Access to EXIM AgilQuest is restricted to EXIM employees and contractors who need it for their job functions. Authorized users have access only to the data and functions required to perform their job functions. AgilQuest uses AWS Key Management Service (KMS), a managed service for AgilQuest to create and control the cryptographic keys that are used to protect EXIM data. AWS KMS uses hardware security modules (HSM) to protect and validate AWS KMS keys under the FIPS 140-2 Cryptographic Module Validation Program (<https://csrc.nist.gov/projects/cryptographic-module-validation-program>) to implement cryptography for data at rest. AWS KMS enables AgilQuest to maintain control over who can use AgilQuest AWS KMS keys and gain access to EXIM encrypted data. Keys distributions are only permitted on the AWS Console Layer. Lost or corrupted keys are managed by AWS KMS. EXIM AgilQuest which is hosted in AWS as a Software-as-a-Service application inherits all the administrative, technical, and physical controls offered

by AWS and the EXIM Infrastructure General Support System.

AgilQuest CSP, is compliant with the Federal Risk and Authorization Management Program (FedRAMP). The PII information in EXIM AgilQuest is encrypted and stored in AWS, and the Hypertext Transfer Protocol Secure (HTTPS) protocol is used to access EXIM AgilQuest.

RECORD ACCESS PROCEDURES:

Requests to access records under the Privacy Act must be submitted in writing and must be signed by the requestor. Requests should be addressed to the Freedom of Information Act Office and the Office of Information Management and Technology, Export Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The request must comply with the requirements of 12 CFR 404.14.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest and/or amend records under the Privacy Act must submit a request in writing. The request must be signed by the requestor and should be addressed to the Freedom of Information Act Office and the Office of Information Management and Technology, Export Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The request must comply with the requirements of 12 CFR 404.14.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by submitting a written request to the Freedom of Information Act Office and the Office of Information Management and Technology, Export Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The written request must include the following:

1. Name.
2. Type of information requested.
3. Address to which the information should be sent.
4. Signature.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Export-Import Bank of the U.S.

Christopher Sutton,

Chief Information Security Officer (CISO) and Chief Privacy Officer (CPO), IT Security Systems & Assurance Unit.

[FR Doc. 2023-22384 Filed 10-6-23; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0715; FR ID 177372]

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.

DATES: Written PRA comments should be submitted on or before December 11, 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: 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.

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network

Information and Other Customer Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and State, Local, or Tribal government.

Number of Respondents and Responses: 2,800 respondents; 94,434,733 responses.

Estimated Time per Response: .002–50 hours.

Frequency of Response: On occasion, annual, and one-time reporting requirements; recordkeeping; and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for these collections are contained in Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

Total Annual Burden: 232,691 hours.

Total Annual Cost: \$4,000,000.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This Customer Proprietary Network Information (CPNI) includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of Section 222. These regulations impose safeguards to protect customers' CPNI against unauthorized access and disclosure. In March 2007, the Commission adopted new rules that focused on the efforts of providers of telecommunications services to prevent pretexting. These rules require providers of telecommunications services to adopt additional privacy safeguards that, the Commission believes, will limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22426 Filed 10–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1168; FR ID 176893]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority**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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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.

DATES: Written PRA comments should be submitted on or before December 11, 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 Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–1168.

Title: Application for Mobility Fund Phase I Support—FCC Form 680.

Form Number: FCC Form 680.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and

Responses: 10 respondents and 10 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection 47 U.S.C. 154, 254 and 303(r).

Total Annual Burden: 15 hours.

Total Annual Cost: \$0.

Needs and Uses: The Commission uses the information collected on FCC Form 680 to determine whether a winning bidder is qualified to receive Mobility Fund Phase I and Tribal Mobility Fund Phase I support. On November 18, 2011, the Commission released an order comprehensively reforming and modernizing the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. *Connect America Fund et al., Order and Further Notice of Proposed Rulemaking*, FCC 11–161 (*USF/ICC Transformation Order*). In the *USF/ICC Transformation Order*, the Commission, among other things, created the Mobility Fund to ensure the availability of mobile broadband networks in areas where a private-sector business case is lacking. Phase I of the Mobility Fund provided one-time universal service support for the deployment of networks for mobile voice and broadband service, and a separate, complementary Tribal Mobility Fund Phase I provided one-time universal service support to accelerate the availability of mobile voice and broadband service on Tribal lands.

The Commission adopted rules to implement the reforms it adopted in the *USF/ICC Transformation Order*, including the rules in sections 1.21004(a), 54.1004, 54.1005, 54.1006, 54.1007, and 54.1008 which contain information collection requirements used to determine whether a winning bidder of Mobility Fund Phase I support and Tribal Mobility Fund Phase I support is qualified to receive such support.

Section 1.21004(a) of the Commission's rules requires each winning bidder in an auction for

universal service support to apply for the support it won by the applicable deadline. Sections 54.1005(b) and 54.1006 require a winning bidder to submit, using FCC Form 680, ownership information, proof of its status as an Eligible Telecommunications Carrier, a description of its spectrum access, a detailed project description, any guarantee of performance that the Commission may require, and various certifications. Sections 54.1004(d)(3) and 54.1008(d) require a winning bidder to certify in its application that it has substantively engaged appropriate Tribal officials. In addition, sections 54.1007(a) and (b) require a winning bidder to obtain and submit to the Commission an irrevocable standby letter of credit, which the winning bidder must maintain until at least 120 days after the winning bidder receives its final distribution of support.

The information collection requirements ensure that a winning bidder submits an application for the universal service support it won, and the Commission uses the information submitted in the application to determine whether the applicant is legally, technically, and financially qualified to receive such support. The requirement that a winning bidder obtain, submit, and maintain a letter of credit will secure a return of universal service funds from a winning bidder that defaults on its obligations and will protect the integrity of the universal service programs. Without such information, the Commission could not determine whether to disburse universal service support to a winning bidder or protect the government's interest in the funds allocated for Mobility Fund Phase I and Tribal Mobility Fund Phase I.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22424 Filed 10–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1139; FR ID 176951]

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.

DATES: Written PRA comments should be submitted on or before December 11, 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: 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.

OMB Control Number: 3060–1139.

Title: FCC Consumer Broadband Services Testing and Measurement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit and individuals or households.

Number of Respondents and Responses: 501,020 respondents and 501,020 responses.

Estimated Time per Response: 1 hour–200 hours.

Frequency of Response: Biennial reporting requirement and third-party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in the Broadband

Data Improvement Act of 2008, Public Law 110–385, Stat 4096, 103(c)(1).

Total Annual Burden: 46,667 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission will submit this expiring collection after this 60-day comment period to the Office of Management and Budget (OMB) to obtain the full three-year clearance.

This study's collection of information on actual speeds and performance of fixed and mobile broadband connections delivered to consumers by ISPs has been reported to be of great value to academic researchers, manufacturers and technology providers, broadband providers, public interest groups and other diverse stakeholders. Validation of fixed broadband subscribed speeds as opposed to actual speeds by participating ISPs remains unique to this program and provides a context for measured speeds. Mobile broadband performance information is measured using the FCC Speed Test app for Android and iOS devices to test the upload and download speeds, latency and packet loss, as well as the wireless performance characteristics of the broadband connection and the kind of handsets and versions of operating systems tested. Information the FCC Speed Test App ("Application") collects is limited to information used to measure volunteers' mobile broadband service and no personally identifiable information, such as subscribers' name, phone number or unique identifiers associated with a device is collected. Software-based tools and online tools exist that can test consumer's broadband connections, including a set of consumer tools launched by the FCC in conjunction with the National Broadband Plan. However, these tools track speeds experienced by consumers, rather than speeds delivered directly to a consumer by an ISP. The distinction is important for supporting Agency broadband policy analysis, as ISPs advertise speeds and performance delivered rather than speeds experienced, which suffers from degradation outside of an ISP's control. No other dedicated panel of direct fixed and mobile broadband performance measurement using publicly documented methodologies using free and add-free technologies exists today in the country. The program will continue to support existing software-based tools and online tools but the focus of the program will remain the direct measurement of broadband performance delivered to the consumer. The collection effort also has specific elements focused on further network

performance statistics, time of day parameters, and other elements affecting consumers' broadband experience that are not tracked elsewhere. The information to be confirmed by ISP Partners about their subscribers or technical and market data regarding the broadband services they provide is unavailable from other sources.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22425 Filed 10–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0430, OMB 3060–1202, 3060–1279; FR ID 177216]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 9, 2023.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Your comment must be submitted into www.reginfo.gov per the

above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0430.

Title: Section 1.1206, Permit-but-Disclose Proceedings.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal governments.

Number of Respondent and Responses: 11,500 respondents; 34,500 responses.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in sections 4(i) and (j), 303(r), and 409 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303(r), and 409.

Estimated Time per Response: 0.75 hours (45 minutes).

Total Annual Burden: 25,875 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission's rules, under 47 CFR 1.1206, require that a public record be made of ex parte presentations (*i.e.*, written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in "permit-but-disclose" proceedings, such as notice-and-comment rulemakings and declaratory ruling proceedings.

On February 2, 2011, the FCC released a Report and Order and Further Notice of Proposed Rulemaking, GC Docket Number 10–43, FCC 11–11, which amended and reformed the Commission's rules on ex parte presentations (47 CFR 1.1206(b)(2)) made in the course of Commission rulemakings and other permit-but-disclose proceedings. The modifications to the existing rules adopted in this Report and Order require that parties file more descriptive summaries of their ex parte contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted ex parte, and by improving the FCC's oversight and enforcement of the ex parte rules. The modified ex parte rules which contain information collection requirements which OMB approved on December 6, 2011, are as follows: (1) Ex parte notices will be required for all oral ex parte presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record; (2) If an oral ex parte presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the

party's written submission(s) where the matters discussed can be found; (3) Notices for all ex parte presentations must include the name of the person(s) who made the ex parte presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made; (4) Notices of ex parte presentations made outside the Sunshine period must be filed within two business days of the presentation; (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide); (6) If an ex parte presentation is made on the day the Sunshine notice is released, an ex parte notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible ex parte presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the ex parte notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the ex parte notice to which the reply is directed; (7) Commissioners and agency staff may continue to request ex parte presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission; (8) Ex parte notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the ex parte filing; (9) To facilitate stricter enforcement of the ex parte rules, the Enforcement Bureau is authorized to levy forfeitures for ex parte rule violations; (10) Copies of electronically filed ex parte notices must also be sent electronically to all staff and Commissioners present at the ex parte meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance

with the rules; and (11) Parties making permissible ex parte presentations in restricted proceedings must conform and clarify rule changes when filing an ex parte notice with the Commission.

The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data offered in the presentations. The responses may then be used by the Commission in its decision-making.

The availability of the ex parte materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested parties can know of and respond to the arguments made to the decision-making officials.

OMB Control Number: 3060–1202.

Title: Improving 9–1–1 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies.

Form Number: Not Applicable (annual on-line certification).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 300 respondents; 305 responses.

Estimated Time per Response: 562 hours (average). Varies by respondent.

Total Annual Burden: 168,651 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. The statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Cost: No Cost.

Needs and Uses: This is a revision of a currently approved information collection necessary to ensure that all Americans have access to reliable and resilient 911 communications, particularly in times of emergency, by requiring certain 911 service providers to certify implementation of key best practices or reasonable alternative measures. The information will be collected in the form of an electronically-filed, annual certification from each covered 911 service provider, as described in the Commission's 2013 *Report and Order*, in which the provider will indicate whether it has

implemented certain industry-backed best practices. Providers that are able to respond in the affirmative to all elements of the certification will be deemed to satisfy the “reasonable measures” requirement in Section 9.19(b) of the Commission’s rules. If a provider does not certify in the affirmative with respect to one or more elements of the certification, it must provide a brief explanation of what alternative measures it has taken, in light of the provider’s particular facts and circumstances, to ensure reliable 911 service with respect to that element(s). Similarly, a service provider may also respond by demonstrating that a particular certification element is not applicable to its networks and must include a brief explanation of why the element(s) does not apply. Providers are also required to notify the Commission in writing within 60 days of completely ceasing operations as a covered 911 service provider.

The information will be collected by the Public Safety and Homeland Security Bureau, FCC, for review and analysis, to verify that covered 911 service providers are taking reasonable measures to maintain reliable 911 service. In certain cases, based on the information included in the certifications and subsequent coordination with the provider, the Commission may require remedial action to correct vulnerabilities in a service provider’s 911 network if it determines that (a) the service provider has not, in fact, adhered to the best practices incorporated in the FCC’s rules, or (b) in the case of providers employing alternative measures, that those measures were not reasonably sufficient to mitigate the associated risks of failure in these key areas. The Commission delegated authority to the Bureau to review certification information and follow up with service providers as appropriate to address deficiencies revealed by the certification process.

The purpose of the collection of this information is to verify that covered 911 service providers are taking reasonable measures such that their networks comply with accepted best practices, and that, in the event they are not able to certify adherence to specific best practices, that they are taking reasonable alternative measures. The Commission adopted these rules in light of widespread 911 outages during the June 2012 derecho storm in the Midwest and Mid-Atlantic states, which revealed that multiple service providers did not take adequate precautions to maintain reliable service.

OMB Control Number: 3060–1279.

Title: Connect America Fund—Eligible Locations Adjustment Process (ELAP).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions, Individuals or Households, and State, Local or Tribal governments.

Number of Respondents and Responses: 296 respondents; 962 responses.

Estimated Time per Response: 2–40 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 254.

Total Annual Burden: 10,804 hours.

Total Annual Cost: No Cost.

Needs and Uses: This information collection addresses the requirements of a process (the eligible locations adjustment process (ELAP)) that the Commission used to facilitate the post-auction review of certain CAF Phase II Auction support recipients’ defined deployment obligations (and associated support), on a state-by-state basis, in situations where the number of eligible locations within a state is less than the number of funded locations. *Connect America Fund*, WC Docket No. 10–90, Order, DA 23–117 (WCB 2023); *Connect America Fund*, WC Docket Nos. 10–90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1390–92, paras. 23–28 (2018) (*Phase II Auction Reconsideration Order*); *Connect America Fund*, WC Docket No. 10–90, Order, 34 FCC Rcd 10395 (WCB 2019) (adopting rules and requirements necessary to implement this process, consistent with the parameters set forth in the *Phase II Auction Reconsideration Order* and prior Commission guidance for adjusting defined deployment obligations) (*ELAP Order*). CAF Phase II Auction support recipients’ participation in this process was voluntary.

ELAP required the one-time collection of location information for eligible locations within the state where the participant sought an adjustment to its defined deployment obligation. Eligible locations included both locations that qualify for support (qualifying locations), which the ELAP participant was required to report, and any additional location(s) (prospective location(s)) within eligible areas of the state that the participant wanted to reserve as part of its defined deployment obligation. The total number of eligible locations reported by

the participant could not exceed the participant’s defined deployment obligation for the state.

In addition, ELAP participants had to submit a description of the method(s) used to identify all qualifying locations, as well as some supporting evidence, such as copies of public records, aerial photography, location information for non-eligible locations, or similar evidence. Participants had to certify the truth and accuracy of this information.

The Bureau announced which participants had met their prima facie evidentiary standard, and the Universal Service Administrative Company (USAC) used certain location information (address, geocoordinates, number of units) filed by these participants to populate a publicly available map (public ELAP Map), which was removed from public inspection at the conclusion of the ELAP process. *WCB Announces CAF Phase II Support Recipients Meeting Standards for Continuing with the Eligible Locations Adjustment Process; the Opening of the Stakeholder Registration Period; Extension of Deadline for Stakeholders to File Challenges; Identification of Potentially Affected Tribal Authorities*, WC Docket No. 10–90, Public Notice, 36 FCC Rcd 16493, 16494 (WCB 2021).

Other interested parties deemed eligible to participate in ELAP (stakeholders) had the opportunity to challenge the accuracy and completeness of any relevant participant’s eligible location information, although none did. To file such a challenge, stakeholders were required to submit alternative location information (of the same kind and in the same format as required of the participant), a brief description of the methods used to identify the location as an eligible location, and supporting evidence. Parties eligible to participate as stakeholders included government entities (state, local, and Tribal) as well as individuals or non-governmental entities with a legitimate and verifiable interest in ensuring broadband service in the relevant areas but excluded any entity or individual with a controlling interest in a competitor of the participant(s) being challenged.

The Bureau committed to using a third-party commercial verifier to confirm the eligibility of any stakeholder who challenged a participant’s location information. The Bureau required certification that the stakeholder (exclusive of governmental entities) did not hold a controlling interest in a direct competitor of the relevant participant. The Bureau also separately gathered certain limited

information about these stakeholders (e.g., name and contact information).

All ELAP information was filed and is maintained in a new module within the High-Cost Universal Service Broadband Portal (HUBB) (OMB Control No. 3060–1228). The module had integrated instructions and guidance for submitting information. This module incorporated several features similar to those associated with the reporting of deployed location information in the HUBB. For example, the module had an automated validation system that generated error messages when the location information submitted by ELAP parties failed to meet reporting parameters (such as redundancies, required file type) as specified in the *ELAP Order*. The module also generated notices where correction, supplementation, or redaction of information is necessary. Participants and stakeholders could pre-file information and correct, update, add, or delete information prior to their respective filing deadline.

Unlike deployed location information collected pursuant to OMB Control No. 3060–1228, all ELAP information, including the description of methods and supporting documentation as well as location data, except the location data published in the public ELAP Map, has been and will continue to be treated as presumptively confidential.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22427 Filed 10–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Open Meeting of the FDIC Advisory Committee on Economic Inclusion; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice; correction.

SUMMARY: The FDIC published a document in the **Federal Register** of September 29, 2023, concerning a meeting of the FDIC Advisory Committee on Economic Inclusion. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT:

Debra A. Decker, Committee Management Officer of the FDIC, 202–898–8748.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 29, 2023, 88 FR 67289, in FR Doc. 2023–

21434, on Page 67289, correct the **DATES** caption to read:

DATES: Thursday, November 2, 2023, from 9:00 a.m. to 4:00 p.m.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 3, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–22355 Filed 10–6–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Meeting of the Employee Thrift Advisory Council

DATES: October 19, 2023 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 370 114 217#; or via web: https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGQxYmRmZmYtNjc2MC00ZTg2LWEwYTctNjNkMzIwODIzZmMz%40thread.v2/0?context=%7b%22Tid%22%3a%22f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%22533f2df2-5cef-4200-af1c-6d760c60d9cf%22%7d.

FOR FURTHER INFORMATION CONTACT:

Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

ETAC Meeting Agenda

1. Approval of the minutes of the May 23, 2023, Joint Board/ETAC Meeting
2. September 2023 Investment Program Review—G, F, C, S, I, and L Funds
3. Participant Report
4. FY2024 FRTIB Budget
5. FY 2023 FISMA Results
6. Legislative Update
7. New Business

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, interested parties may submit written statements in response to the stated agenda of the meeting, or to the Employee Thrift Advisory Council (ETAC), in general. Individuals may submit their comments to ETACComments@fritib.gov. Written comments or statements received less than 5 days before ETAC's meeting may not be provided to the Committee until its next meeting.

(Authority: 5 U.S.C. 552(b)(1).)

Dated: October 3, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–22362 Filed 10–6–23; 8:45 am]

BILLING CODE P

GOVERNMENT PUBLISHING OFFICE

Depository Library Council Meeting

AGENCY: Government Publishing Office.

ACTION: Notice of meeting.

SUMMARY: The Depository Library Council (DLC) will meet virtually in conjunction with the Federal Depository Library Conference from Monday, October 16, 2023, through Wednesday, October 18, 2023. The sessions will take place from 12 p.m. to 5:30 p.m. (EDT). The meetings will take place online, and anyone can register to attend at <https://www.fdlp.gov/2023-fdl-conference>. Closed captioning will also be provided. The purpose is to discuss matters affecting the Federal Depository Library Program. All sessions are open to the public.

DATES: October 16–18, 2023.

Hugh Nathaniel Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2023–22404 Filed 10–6–23; 8:45 am]

BILLING CODE 1520–01–P

GOVERNMENT PUBLISHING OFFICE

Congressionally Mandated Reports: OMB/GPO Guidance

AGENCY: U.S. Government Publishing Office.

ACTION: Notice: Federal agencies can register for congressionally mandated reports submission portal & begin submitting reports to GPO.

SUMMARY: The U.S. Government Publishing Office (GPO) has moved to the next phase of accepting submissions of congressionally mandated reports from Federal agencies during the month of October 2023. Agencies can now sign up for a submission portal account. Beginning on October 16th, agencies can start submitting their reports to GPO through their portal accounts. Sign up for a portal account: <https://ask.gpo.gov/s/CMR>. Agencies are now required by law to submit congressionally mandated reports to GPO. The reports will be published and made available to the public on GPO's online system, GovInfo <https://www.govinfo.gov/>, beginning December 2023. When fully deployed, this will be the first time congressionally mandated reports will

be accessible to the public in one place. Under this new requirement, agencies will continue their current practice of submitting printed, signed copies of mandated reports directly to Congress and committees and subcommittees. All resources related to congressionally mandated reports for Federal agencies can be found at <https://www.gpo.gov/congressionally-mandated-reports>. For questions, please use the Congressionally Mandated Reports submission portal: <https://ask.gpo.gov/s/CMR>. Click the drop down arrow next to Ask a Question, and then select Agency User or Congressional User.

Hugh Nathaniel Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2023-22336 Filed 10-6-23; 8:45 am]

BILLING CODE 1520-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

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

ACTION: Notice of meeting.

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 live via webcast on the World Wide Web. The webcast link can be found on the HICPAC website at www.cdc.gov/hicpac/meeting.html. Time will be available for public comment.

DATES: The meeting will be held on November 2, 2023, 9 a.m. to 5 p.m., EDT, and November 3, 2023, 9 a.m. to 12 p.m., EDT.

ADDRESSES: The meeting will be webcast live via the World Wide Web. The webcast link can be found on the HICPAC website at www.cdc.gov/hicpac/meeting.html.

FOR FURTHER INFORMATION CONTACT:

Sydnee Byrd, M.P.A., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16-3, Atlanta, Georgia 30329, Telephone (404) 718-8039. Email: hicpac@cdc.gov.

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 (NCEZID), the Director, CDC, and the Secretary, 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 (NHSN) 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: This meeting will include time for members of the public to make an oral comment. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the following procedures: All persons interested in making an oral public comment at the November 2-3, 2023 HICPAC meeting must submit a request between October 2, 2023 and October 22, 2023, at <https://www.cdc.gov/hicpac/meeting.html> no later than 11:59 p.m., EDT, October 22, 2023, according to the instructions provided on the HICPAC website. If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a random draw to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email on October 30, 2023. To accommodate the significant interest in participation in the oral public comment session of HICPAC meetings, each speaker will be limited to three minutes, and each speaker may only speak once per meeting.

Written Public Comment: The public is welcome to submit written comments in advance of the meeting. The written public comment period will open November 1, 2023, and will close at 11:59 p.m., EDT on November 6, 2023.

Comments should be submitted in writing by email to the HICPAC inbox at hicpac@cdc.gov. 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. Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Office of Strategic Business Initiatives, 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, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023-22327 Filed 10-6-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Generic for Administration for Children and Families Program Monitoring Activities (Office of Management and Budget #: 0970-0558)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) intends to request from the Office of Management and Budget (OMB) an extension of approval for an umbrella generic clearance for information collections related to ACF program office monitoring activities. ACF programs promote the economic and social well-being of families, children, individuals, and communities. The Generic for ACF Program Monitoring Activities allows ACF program offices to collect standardized information from recipients that receive federal funds to ensure oversight, evaluation, support purposes, and stewardship of federal funds. There are no changes proposed to

the terms of the generic. Burden estimates have been updated.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review-Open for Public Comments” or by using the search function. You can also obtain copies of the proposed collection of information by emailing

OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:
Description: Program monitoring is a post-award process through which ACF assesses a recipient’s programmatic performance and business management performance. Monitoring activities are necessary to ensure timely action by ACF to support grantees and protect federal interests.

Program offices use information collected under this generic clearance to monitor funding recipient activities and to provide support or take appropriate action, as needed. The information gathered is or will be used primarily for internal purposes, but aggregate data may be included in public materials such as Reports to Congress or program office documents. Following standard OMB requirements, ACF will submit a request for each individual data

collection activity under this generic clearance. Each request will include the individual form(s) or instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB is requested to review requests within 10 days of submission.

Respondents: ACF funding recipients.

Annual Burden Estimates

This request will extend approval of currently approved monitoring forms. Currently approved forms and related burden can be found here: https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202307-0970-014.

Burden estimates for the next three years have been updated to reflect trends in use over the past three years. These are based on averages and actual individual requests will vary based on program office need.

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)
New Program Monitoring Forms	1600	2.5	12	48,000

Mary B. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2023–22382 Filed 10–6–23; 8:45 am]
BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3636]

Food and Drug Administration Information Technology Strategy; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA or Agency) is correcting a notice entitled “Food and Drug Administration Information Technology Strategy; Request for Comments” that appeared in the **Federal Register** of September 19, 2023. The document announced the availability of an information technology (IT) strategic plan entitled the “FDA Information Technology Strategy” and a request for comment on this IT Strategy. The document was published with an incorrect set of fiscal

year information. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Casi Alexander, Office of Digital Transformation, Food and Drug Administration, FDA Library, 5630 Fishers Lane, Rm. 1087, Rockville, MD 20857, 240–402–5171, email: Casi.Alexander@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 2023 (88 FR 64435), in FR Doc. 2023–20136, the following correction is made:

On page 64436, in the third column, in the second paragraph, “Fiscal Years 2024–2026” is corrected to read “Fiscal Years 2024–2027.”

Dated: October 4, 2023.

Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2023–22388 Filed 10–6–23; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4202]

Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of Mpox; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocations of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Life Technologies Corp. (a part of Thermo Fisher Scientific Inc.), for the TaqPath Monkeypox/Orthopox Virus DNA Kit, and Becton, Dickinson and Co., for the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by these Authorization holders. The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the Life Technologies Corp. (a part of Thermo

Fisher Scientific Inc.)'s, TaqPath Monkeypox/Orthopox Virus DNA Kit is revoked as of April 18, 2023. The Authorization for the Becton, Dickinson and Co.'s, VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System is revoked as of May 24, 2023.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993-0002, 301-796-0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108-276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113-5) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On December 13, 2022, FDA issued the Authorization to Life Technologies Corp. (a part of Thermo Fisher Scientific

Inc.) for the TaqPath Monkeypox/Orthopox Virus DNA Kit, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on January 11, 2023 (88 FR 1587), as required by section 564(h)(1) of the FD&C Act. On December 23, 2022, FDA issued the Authorization to Becton, Dickinson and Co. for the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on January 31, 2023 (88 FR 6262), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. Authorizations Revocation Request

In a request received by FDA on April 13, 2023, Life Technologies Corp. (a part of Thermo Fisher Scientific Inc.), requested the revocation of, and on April 18, 2023, FDA revoked, the Authorization for the Life Technologies Corp. (a part of Thermo Fisher Scientific Inc.)'s TaqPath Monkeypox/Orthopox Virus DNA Kit. Because Life Technologies Corp. (a part of Thermo Fisher Scientific Inc.), notified FDA that it is not commercially supporting the TaqPath Monkeypox/Orthopox Virus DNA Kit and no kit reagents were distributed in the United States and requested FDA revoke the Life

Technologies Corp. (a part of Thermo Fisher Scientific Inc.)'s TaqPath Monkeypox/Orthopox Virus DNA Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on May 22, 2023, Becton, Dickinson and Co., requested the withdrawal of, and on May 24, 2023, FDA revoked, the Authorization for the Becton, Dickinson and Co.'s VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System. Because Becton, Dickinson and Co., notified FDA that it is not commercially manufacturing the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System and no reagents were distributed in the United States and requested FDA revoke the Becton, Dickinson and Co.'s VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at <https://www.regulations.gov/>.

IV. The Revocations

Having concluded that the criteria for revocation of the Authorization under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of Life Technologies Corp. (a part of Thermo Fisher Scientific Inc.)'s TaqPath Monkeypox/Orthopox Virus DNA Kit, and Becton, Dickinson and Co.'s VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System. The revocations in their entirety follow and provide an explanation of the reasons for revocations, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164-01-P



April 18, 2023

Stacey Moltchanoff
Regulatory Affairs Manager
Life Technologies Corporation (a part of Thermo Fisher Scientific Inc.)
5781 Van Allen Way
Carlsbad, CA 92008

Re: Revocation of EUA220461

Dear Stacey Moltchanoff:

This letter is in response to the request from Life Technologies Corporation (a part of Thermo Fisher Scientific Inc.), in a letter received April 13, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for TaqPath Monkeypox/Orthopox Virus DNA Kit issued on December 13, 2022. Thermo Fisher Scientific Inc. has decided not to commercially support the EUA product and requested that the EUA be revoked. FDA understands that, as of the date of this letter, no TaqPath Monkeypox/Orthopox Virus DNA Kit reagents were distributed in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Thermo Fisher Scientific Inc. has requested that FDA revoke the EUA for the TaqPath Monkeypox/Orthopox Virus DNA Kit, FDA has determined that it is appropriate, to protect the public health or safety, to revoke this authorization. Accordingly, FDA hereby revokes EUA220461 for the TaqPath Monkeypox/Orthopox Virus DNA Kit, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the TaqPath Monkeypox/Orthopox Virus DNA Kit is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration



May 24, 2023

Melissa Barhoover, Ph.D., RAC
Senior Regulatory Affairs Manager
Becton, Dickinson and Company
7 Loveton Circle,
Sparks, MD 21152-0999

Re: Revocation of EUA220453

Dear Dr. Barhoover:

This letter is in response to the request from Becton, Dickinson and Company ("BD"), in a letter received May 22, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System issued on December 23, 2022. BD has decided not to manufacture or sell these kits moving forward and requested that the EUA be withdrawn. FDA understands that, as of the date of this letter, no VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System reagents were distributed in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because BD has requested that FDA withdraw the EUA for the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System, FDA has determined that it is appropriate, to protect the public health or safety, to revoke this authorization. Accordingly, FDA hereby revokes EUA220453 for the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the VIASURE Monkeypox virus Real Time PCR Reagents for BD MAX System is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

Dated: October 4, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-22390 Filed 10-6-23; 8:45 am]

BILLING CODE 4164-01-C

**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; Implementing Comprehensive HIV Services in Syringe Service Program Settings.

Date: November 17, 2023.

Time: 12:00 to 2:00 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: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892 (301) 827-5843, trinh.tran@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: October 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-22361 Filed 10-6-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2023-0292]

National Chemical Transportation Safety Advisory Committee; November 2023 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The National Chemical Transportation Safety Advisory Committee (Committee) will conduct a series of meetings over three days in League City, TX, to discuss matters relating to the safe and secure marine transportation of hazardous materials. The subcommittee meetings will also be available by videoconference for those unable to attend in person, however the full committee meeting will be held in person only. All meetings will be open to the public.

DATES:

Meetings: National Chemical Transportation Safety Advisory Committee subcommittees will meet on Tuesday, November 28 and Wednesday, November 29, 2023, from 9 a.m. to 5 p.m. Central Standard Time (CST) each day. The full Committee will meet on Thursday, November 30, 2023, from 9 a.m. until 5 p.m. CST. Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meeting, submit your written comments no later than November 15, 2023.

ADDRESSES: The meeting will be held at INEOS Oligomers USA, 2600 South Shore Boulevard, Suite 400, League City, TX 77573.

Pre-Registration Information: Pre-registration is required for in-person access to the meeting or to attend the subcommittee meetings by videoconference. Public attendees will be required to pre-register no later than noon, Eastern Standard Time, on November 15, 2023, to be admitted to the meeting. In-person attendance may be capped due to limited space in the meeting venue, and registration will be on a first-come-first-served basis. To pre-register, contact Lieutenant Ethan Beard at Ethan.T.Beard@uscg.mil. You will be asked to provide your name, telephone number, email, company, or group with which you are affiliated, and whether you wish to attend virtually or in person; if a foreign national, also provide your country of citizenship, passport country, country of residence, place of birth, passport number, and passport expiration date.

The National Chemical Transportation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Lieutenant Ethan Beard at Ethan.T.Beard@uscg.mil or call at 202-372-1419 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than November 15, 2023. We are particularly interested in comments on the topics in the "Agenda" section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov/docket/USCG-2023-0292>. If your material cannot be submitted using <https://www.regulations.gov>, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG-2023-0292. We do not redact personal information from comments which are posted at <https://www.regulations.gov>, so any personal information provided in a comment posted will be viewable by

the public. You may wish to review the Privacy and Security Notice found via a link on the homepage of <https://www.regulations.gov>, and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Ethan T. Beard, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee, telephone 202-372-1419, or email Ethan.T.Beard@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of the meeting of the National Chemical Transportation Safety Advisory Committee is in compliance with the *Federal Advisory Committee Act*, (Pub. L. 117-286, 5. U.S.C., ch. 10). The Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115-282, 132 Stat. 4192) and is codified in 46 U.S.C. 15101. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U.S. Coast Guard on matters related to the safe and secure marine transportation of hazardous materials.

Agenda

Tuesday, November 28, 2023

Two subcommittees will meet to discuss the following task statements:

9:00 a.m.–12:00 p.m. CST

(1) *Task Statement 21-01:* Recommendations on Loading Limits of Gas Carriers and USCG Supplement to International Hazardous Zone Requirements.

1:30 p.m.–5:00 p.m. CST

(2) *Task Statement 22-01:* Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals,

Liquefied Gases and Liquefied Natural Gas (LNG).

Wednesday, November 29, 2023

Two subcommittees will meet to discuss the following task statements:

9:00 a.m.–12:00 p.m. CST

(1) *Task Statement 22–03*: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

1:30 p.m.–5:00 p.m. CST

(2) *Task Statement 22–02*: Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries.

The task statements and other subcommittee information are located at Homeport at the following address: [https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-\(nctsac\)/task-statements](https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/task-statements). The agenda for the discussion of each task statement will include the following:

- (1) Introduction and review subcommittee task statement.
- (2) Public comment period.
- (3) Subcommittee discussion and preparation of any proposed recommendations for the Committee meeting on November 30, 2023.
- (4) Adjournment of meeting.

Thursday, November 30, 2023

The agenda for the National Chemical Transportation Safety Advisory Committee meeting on Thursday, November 30, 2023 is as follows:

- (1) Call to order.
- (2) Roll call and determination of quorum.
- (3) Remarks from U.S. Coast Guard leadership.
- (4) Chairman and Designated Federal Officer's remarks.
- (5) Acceptance of June 15, 2023 meeting minutes and status of task items.
- (6) Committee will review, discuss, and formulate recommendations on the following items:
 - a. *Task Statement 21–01*: Recommendations on Loading Limits of Gas Carriers and U.S. Coast Guard Supplement to International Hazardous Zone Requirements.
 - b. *Task Statement 22–01*: Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and Liquefied Natural Gas (LNG).
 - c. *Task Statement 22–02*: Recommendations on Industry Best

Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries.

d. *Task Statement 22–03*: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control System.

(7) Subcommittee recommendation discussion.

(8) *Presentation of Task Statement 23–01*: Recommendations to Update CG–ENG Policy Letter 02–15.

(9) Task statement tracking discussion.

(10) Public comment period.

(11) Set next meeting date and location.

(12) Adjournment of meeting.

A copy of all meeting documentation will be available at: [https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-\(nctsac\)/committee-meetings](https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/committee-meetings) no later than November 22, 2023.

Alternatively, you may contact Lieutenant Ethan Beard as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meetings as the Committee discusses the issues and prior to deliberations and voting. There will be a public comment period at the end of meetings. Speakers are requested to limit their comments to two minutes. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: October 2, 2023.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2023–22410 Filed 10–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds of Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will increase from the previous quarter. For

the calendar quarter beginning October 1, 2023, the interest rates for underpayments will be 8 percent for both corporations and non-corporations. The interest rate for overpayments will be 8 percent for non-corporations and 7 percent for corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2023–17, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2023, and ending on December 31, 2023. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%) for both corporations and non-corporations. For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties increased from the previous quarter. These interest rates are subject to change for the calendar quarter

beginning January 1, 2024, and ending on March 31, 2024.

For the convenience of the importing public and U.S. Customs and Border

Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to

calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	033122	3	3	2
040122	063022	4	4	3
070122	093022	5	5	4
100122	123122	6	6	5
010123	093023	7	7	6
100123	123123	8	8	7

Dated: October 4, 2023.

Jeffrey Caine,

Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2023-22413 Filed 10-6-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB-2023-0012]

RIN 1653-ZA43

Employment Authorization for Cameroonian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Armed Conflict and Current Humanitarian Crisis in Cameroon

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F-1 nonimmigrant students whose country of citizenship is Cameroon, regardless of country of birth (or individuals having no nationality who last habitually resided in Cameroon), and who are experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon. The Secretary is taking action to provide relief to these Cameroonian students who are in lawful F-1 nonimmigrant student status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F-1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F-1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a “full course of study” for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This action is effective December 8, 2023, through June 7, 2025.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement,

500 12th Street SW, Washington, DC 20536-5600. email: sevp@ice.dhs.gov, telephone: (703) 603-3400. This is not a toll-free number. Program information can be found at <https://www.ice.gov/sevis/>.

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F-1 nonimmigrant students whose country of citizenship is Cameroon regardless of country of birth (or individuals having no nationality who last habitually resided in Cameroon), who are present in the United States in lawful F-1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon. The original notice, which suspended certain regulatory requirements for F-1 nonimmigrant students experiencing severe economic hardship as a direct result of the crisis at that time was effective from June 7, 2022, through December 7, 2023. *See* 87 FR 34701 (June 7, 2022). Effective with this publication, suspension of the employment limitations is available through June 7, 2025, for those who are in lawful F-1 nonimmigrant status on the date of publication of this notice. DHS will deem an F-1 nonimmigrant student granted employment authorization through this notice to be engaged in a “full course of study” for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.¹ *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F-1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Cameroon regardless of country of birth (or an individual having no nationality who last habitually resided in Cameroon);

¹ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F-1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of June 7, 2025, provided the student satisfies the minimum course load requirements in this notice.

(2) Were lawfully present in the United States on the date of publication of this notice in F-1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F-1 nonimmigrant students;

(4) Are currently maintaining F-1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon.

This notice applies to F-1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F-1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Cameroonian F-1 nonimmigrant students experiencing severe economic hardship due to the current armed conflict and current humanitarian crisis in Cameroon. Based on its review of country conditions in Cameroon and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F-1 nonimmigrant students from Cameroon to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F-1 nonimmigrant status.

In Cameroon’s Far North region, attacks from Boko Haram and the Islamic State West Africa Province (ISWAP, aka IS-WA, aka ISIS-WA) are becoming more frequent as part of the armed conflict in that region.² Separately, the Republic of Cameroon continues to face secessionist violence in the English-speaking regions (Northwest Region and Southwest Region). The armed conflict in the Far North and violence elsewhere has led to a severe humanitarian crisis in Cameroon, weakened the economy, and caused many Cameroonians to flee to

² Cameroon Crisis Response Plan 2023, UN International Office of Migration, Jan. 19, 2023, available at <https://crisisresponse.iom.int/response/cameroon-crisis-response-plan-2023> (last visited July 26, 2023).

internal displacement camps or to foreign countries as refugees.³

Secessionist Violence

According to the International Crisis Group, armed separatists continue to ambush security forces and harass aid workers in their fight to secede from the majority-Francophone country.⁴ For the first time, in May 2023, armed separatists attacked military posts near the second largest city of Cameroon, Douala.⁵ The city of Douala houses a strategic seaport of about four million people, which supplies 80 percent of the imported goods for the neighboring landlocked Central African Republic and Chad.⁶ Officials say the separatists killed at least six people and wounded many others.⁷ Separatists have also targeted civilians in other ways.⁸ For example, the separatists have kidnapped civilians for ransom, extorted shopkeepers and others, and imposed their own taxes on businesses.⁹ Meanwhile, the Separatists continue targeted violence continues in the English-speaking regions.¹⁰

³ Cameroon Factsheet, European Union Civil Protection and Humanitarian Aid Operations, available at https://civil-protection-humanitarian-aid.ec.europa.eu/where/africa/cameroon_en (last visited July 26, 2023); See also: Cameroon—Situation Report, UNOCHA, available at <https://reports.unocha.org/en/country/cameroon/> (last visited July 26, 2023).

⁴ A Second Look at Cameroon's Anglophone Special Status, ICG, available at <https://www.crisisgroup.org/africa/central-africa/cameroon/b188-second-look-camerouns-anglophone-special-status> (last visited July 26, 2023).

⁵ Cameroon Separatists Stage Attack Near French-Speaking City of Douala, Voice of America, available at <https://www.globalsecurity.org/military/library/news/2023/05/mil-230502-voa04.htm> (last visited July 25, 2023).

⁶ Cameroon Separatists Stage Attack Near French-Speaking City of Douala, Voice of America, available at <https://www.voanews.com/a/cameroon-separatists-stage-attack-near-french-speaking-city-of-douala/7075202.html> (last visited July 25, 2023).

⁷ Cameroon Separatists Stage Attack Near French-Speaking City of Douala, Voice of American, available at <https://www.globalsecurity.org/military/library/news/2023/05/mil-230502-voa04.htm> (last visited July 25, 2023).

⁸ Cameroon: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 26, 2023).

⁹ Cameroon could face new atrocity crimes after deploying government forces to counter armed separatists, Robert Lansing Institute, available at <https://lansinginstitute.org/2023/01/20/cameroon-could-face-new-atrocity-crimes-after-deploying-government-forces-to-counter-armed-separatists/> (last visited July 26, 2023).

¹⁰ Cameroon: Suspected separatists kidnap 50 women in Mezam Department, Northwest Region, May 19, Crisis 24, available at <https://crisis24.garda.com/alerts/2023/05/cameroon-suspected-separatists-kidnap-50-women-in-mezam-department-northwest-region-may-19> (last visited July 26, 2023).

Economic Concerns

Armed separatists have restricted the movements of persons and goods in the Northwest and Southwest Regions, sometimes in a deliberate attempt to harass and intimidate the local population.¹¹ Separatists are frequently using weekly lockdowns, sometimes referred to as “ghost towns” to limit movement by ordering businesses, schools, and places of worship closed, and residents to remain home.¹²

According to the World Bank, Cameroon suffers from weak governance, hindering its development and ability to attract investors.¹³ The 2021/2022 Human Development Index ranked Cameroon 151 out of 191 countries.¹⁴ Although there has been some economic progress, poverty remains a significant problem. It is estimated that 37.5 percent of the country's population lives below the poverty line and in some other regions this estimate exceeds 70 percent.¹⁵

According to the African Development Bank, real GDP growth decreased to 3.4 percent in 2022 from 3.6 percent in 2021. Inflation increased to 6.2 percent in 2022 from 2.3 percent in 2021, which exceeds the Central African Economic and Monetary Community (CEMAC) goal of 3 percent.¹⁶ The World Bank also reported on Cameroon's high inflation and cited the war in Ukraine and the COVID-19 pandemic as contributing factors to it.¹⁷

Humanitarian Concerns

Cameroon faces a humanitarian crisis due to multiple factors including the violence in the English-speaking regions and the conflict in the Far-North region. Islamist armed groups like Boko Haram

¹¹ 2022 Country Reports on Human Rights Practices: Cameroon, US Department of State, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/> (last visited July 25, 2023).

¹² 2022 Country Reports on Human Rights Practices: Cameroon, US Department of State, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/> (last visited July 25, 2023).

¹³ The World Bank in Cameroon, World Bank, available at <https://www.worldbank.org/en/country/cameroon/overview> (last visited July 25, 2023).

¹⁴ Cameroon Humanitarian Needs Overview 2023 (March 2023), United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), <https://www.unocha.org/publications/report/cameroon/cameroon-humanitarian-needs-overview-2023-march-2023> (last visited Sept. 26, 2023).

¹⁵ *Id.*

¹⁶ Cameroon Economic Outlook, African Development Bank, available at <https://www.afdb.org/en/countries/central-africa/cameroon> (last visited July 24, 2023).

¹⁷ Cameroon Overview, World Bank, available at <https://www.worldbank.org/en/country/cameroon/overview> (last visited July 24, 2023).

and ISWAP have continued attacks in this region, killing many civilians, and further contributing to the internal displacement of over 378,000 of Cameroonians by July 2022 alone.¹⁸ As of May 2023, there were 1,066,254 internally displaced persons,¹⁹ an increase from 983,281 internally displaced persons in February 2022,²⁰ as well as over 86,000 Cameroonian refugees in Nigeria as of November 2022.²¹

According to the United Nations, “in 2023, one out of six people living in Cameroon needs humanitarian assistance and protection, a total of 4.7 million people. More than 3.2 million people are projected to face acute food insecurity in 2023.”²² “While 3.9 million people needed humanitarian assistance in 2022, a higher number (4.7 million) may need it in 2023, according to the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA)’s draft 2023 Humanitarian Need Overview.”²³ “Additionally, the country faces the enormous challenge of ensuring food security in the face of the fastest increases in commodity prices for food since 2008.”²⁴

According to the UN OCHA, in 2023, 3 million people are estimated to be facing acute food insecurity in Cameroon.²⁵ Additionally, more than 2

¹⁸ Cameroon: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 26, 2023).

¹⁹ Cameroon Multi Country Office: Refugees and Internally Displaced Persons (Figures available as of 31 May 2023), Reliefweb, available at <https://reliefweb.int/map/cameroon/cameroon-multi-country-office-refugees-and-internally-displaced-persons-figures-available-31-may-2023> (last visited July 26, 2023).

²⁰ Persons of Concern in Cameroon MCO (January 2023), UN OCHA Reliefweb, Feb. 27, 2023, available at <https://reliefweb.int/report/cameroon/persons-of-concern-cameroon-mco-january-2023> (last visited July 26, 2023).

²¹ Cameroonian Refugees in Nigeria—Operational Update, November 2022, UN OCHA Reliefweb, Dec. 19, 2022, available at <https://reliefweb.int/report/nigeria/cameroonian-refugees-nigeria-operational-update-november-2022> (last visited Sept. 26, 2023).

²² Cameroon Humanitarian Needs Overview 2023 (March 2023), Reliefweb, available at <https://reliefweb.int/report/cameroon/cameroon-humanitarian-needs-overview-2023-march-2023#:~:text=In%202023%2C%20one%20out%20of,%20C%20returnees%2C%20or%20refugees> (last visited July 26, 2023).

²³ Cameroon Factsheet, European Union Civil Protection and Humanitarian Aid Operations, 2023, available at https://civil-protection-humanitarian-aid.ec.europa.eu/where/africa/cameroon_en (last visited July 26, 2023).

²⁴ Cameroon Crisis Response Plan 2023, UN International Office of Migration, available at <https://crisisresponse.iom.int/response/cameroon-crisis-response-plan-2023> (last visited July 26, 2023).

²⁵ Cameroon—Situation Report, UNOCHA, available at <https://reports.unocha.org/en/country/cameroon/> (last visited July 26, 2023).

million people are classified as internally displaced persons (IDPs), returnee persons or refugees, and do not have access to many services.²⁶ The UN OCHA also estimates that 77 percent of those in need of humanitarian assistance are women and children.²⁷

The humanitarian situation continues to deteriorate due to the activities of armed groups that have obstructed aid agencies' access to areas they control.²⁸ Moreover, the armed groups continue to damage and destroy civilian infrastructures.²⁹

As of September 19, 2023, approximately 1,160 F–1 nonimmigrant students from Cameroon are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current armed conflict and current humanitarian crisis in Cameroon, affected students whose primary means of financial support comes from Cameroon may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current armed conflict and current humanitarian crisis has made it unfeasible for many students to safely return to Cameroon for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a “full course of study.” See 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. See 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain “class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,” as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Cameroonian citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Cameroon), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert “on-campus” or “off-campus,” depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the

beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].³⁰

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her “full course of study”?

No. DHS will deem an F–1 nonimmigrant student who receives and complies with the employment authorization permitted under this notice to be engaged in a “full course of study”³¹ for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a “full course of study.” See 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

³⁰ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study.” See 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of June 7, 2025, provided the student satisfies the minimum course load requirements in this notice.

³¹ See 8 CFR 214.2(f)(6).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Cameroon: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 26, 2023).

²⁹ *Id.*

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F-1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F-1 nonimmigrant students who meet the following conditions:

- (1) Are a citizen of Cameroon regardless of country of birth (or an individual having no nationality who last habitually resided in Cameroon);
- (2) Were lawfully present in the United States on the date of publication of this notice in F-1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);
- (3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F-1 nonimmigrant students;
- (4) Are maintaining F-1 nonimmigrant status; and
- (5) Are experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon.

An F-1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon).

Does this notice apply to a continuing F-1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F-1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F-1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I-20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F-1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F-1 status?

Yes. However, this notice does not by itself reduce the required course load for F-1 nonimmigrant students from Cameroon enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high

school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F-1 nonimmigrant students regardless of educational level. Eligible F-1 nonimmigrant students from Cameroon enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization
Will an F-1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F-1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F-1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F-1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I-20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].³²

To obtain on-campus employment authorization, the F-1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current armed

conflict and current humanitarian crisis in Cameroon. An F-1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F-1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F-1 nonimmigrant student status?

Yes. DHS will deem an F-1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a "full course of study" ³³ for the purpose of maintaining their F-1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F-1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F-1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.³⁴

Off-Campus Employment Authorization
What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F-1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

- (a) The requirement that a student must have been in F-1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;
- (b) The requirement that an F-1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

³³ See 8 CFR 214.2(f)(6).

³⁴ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

³² Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F-1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a "full course of study," see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of June 7, 2025, provided the student satisfies the minimum course load requirements in this notice.

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a “full course of study”³⁵ for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). The authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.³⁶

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current armed conflict and current humanitarian crisis in Cameroon.³⁷ Filing instructions are located at <https://www.uscis.gov/i-765>.

Fee considerations. Submission of a Form I–765 currently requires payment of a \$410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765,

Application for Employment Authorization. See <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>. The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). See 8 CFR 103.7(c) (Oct. 1, 2020).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

- (1) This employment is necessary to avoid severe economic hardship; and
- (2) The hardship is a direct result of the current armed conflict and current humanitarian crisis in Cameroon.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].³⁸

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

- (a) The F–1 nonimmigrant student is in good academic standing and is carrying a “full course of study”³⁹ at the time of the request for employment authorization;
- (b) The F–1 nonimmigrant student is a citizen of Cameroon, regardless of

country of birth (or an individual having no nationality who last habitually resided in Cameroon), and is experiencing severe economic hardship as a direct result of the current armed conflict and current humanitarian crisis in Cameroon, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level;⁴⁰ and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current armed conflict and current humanitarian crisis in Cameroon.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

- (1) A completed Form I–765 with all applicable supporting evidence;
- (2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c) (Oct. 1, 2020); and
- (3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase “SPECIAL STUDENT RELIEF.”⁴¹ Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

⁴⁰ 40 8 CFR 214.2(f)(5)(v).

⁴¹ Guidance for direct filing addresses can be found here: <https://www.uscis.gov/i-765-addresses>.

³⁵ See 8 CFR 214.2(f)(6).

³⁶ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

³⁷ See 8 CFR 274a.12(c)(3)(iii).

³⁸ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of June 7, 2025, provided the student satisfies the minimum course load requirements in this notice.

³⁹ See 8 CFR 214.2(f)(6).

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,⁴² under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Cameroon for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through June 7, 2025, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Cameroon for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of

certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the F–1 nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a “full course of study”⁴³ unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (e.g., clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO's required entry in SEVIS and issuance of an updated Form I–20, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). See 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current armed conflict and current humanitarian crisis in Cameroon. The DSO will then verify and update the

student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. See 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until June 7, 2025,⁴⁴ to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Cameroon. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current armed conflict and current humanitarian crisis in Cameroon must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget

⁴² See DHS Study in the States, Special Student Relief, <https://studyinthestates.dhs.gov/students/special-student-relief> (last visited May 10, 2023).

⁴³ See 8 CFR 214.2(f)(6).

⁴⁴ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of June 7, 2025, provided the student satisfies the minimum course load requirements in this notice.

(OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2762–23; DHS Docket No. USCIS–2022–0005]

RIN 1615–ZB95

Extension and Redesignation of Cameroon for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Cameroon for Temporary Protected Status (TPS) for 18 months, beginning on December 8, 2023, and ending on June 7, 2025. This extension allows existing TPS beneficiaries to retain TPS through June

7, 2025, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through June 7, 2025, must re-register during the 60-day re-registration period described in this notice. The Secretary is also redesignating Cameroon for TPS. The redesignation of Cameroon allows additional Cameroonian nationals (and individuals having no nationality who last habitually resided in Cameroon) who have been continuously residing in the United States since October 5, 2023, to apply for TPS for the first time during the initial registration period described under the redesignation information in this notice. In addition to demonstrating continuous residence in the United States since October 5, 2023, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since December 8, 2023, the effective date of this redesignation of Cameroon for TPS.

DATES:

Extension of Designation of Cameroon for TPS: The 18-month designation of Cameroon for TPS begins on December 8, 2023, and will remain in effect for 18 months, ending on June 7, 2025. The extension impacts existing beneficiaries of TPS.

Re-Registration: The 60-day re-registration period for existing beneficiaries runs from October 10, 2023 through December 11, 2023. (Note: It is important for re-registrants to timely re-register during the registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Redesignation of Cameroon for TPS: The 18-month redesignation of Cameroon for TPS begins on December 8, 2023, and will remain in effect for 18 months, ending on June 7, 2025. The redesignation impacts potential first-time applicants and others who do not currently have TPS.

First-Time Registration: The initial registration period for new applicants under the Cameroon TPS redesignation begins on October 10, 2023 and will remain in effect through June 7, 2025.

FOR FURTHER INFORMATION CONTACT:

• You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration

Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

• For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. You can find specific information about Cameroon's TPS designation by selecting “Cameroon” from the menu on the left side of the TPS web page.

• If you have additional questions about TPS, please visit uscis.gov/tools. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

• Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at uscis.gov, or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>.

• Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–131—Application for Travel Document
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Cameroon (or individuals having no nationality who last habitually resided in Cameroon) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Cameroon and whose applications have been granted. Failure to re-register properly within the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14.

For individuals who have already been granted TPS under Cameroon's designation, the 60-day re-registration period runs from October 10, 2023 through December 11, 2023. USCIS will issue new EADs with a June 7, 2025, expiration date to eligible Cameroonian TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of certain EADs previously issued under the TPS designation of Cameroon through December 7, 2024. Therefore, as proof of continued employment authorization through December 7, 2024, TPS beneficiaries can show their EADs that have the notation A-12 or C-19 under Category and a "Card Expires" date of December 7, 2023. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I-9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Cameroon TPS application (Form I-821) and/or Application for Employment Authorization (Form I-765) that was still pending as of October 10, 2023 do not need to file either application again. If USCIS approves an individual's pending Form I-821, USCIS will grant the individual TPS through June 7, 2025. Similarly, if USCIS approves a pending TPS-related Form I-765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 2,090

beneficiaries under Cameroon's TPS designation.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from October 10, 2023 and runs through the full length of the redesignation period ending June 7, 2025. In addition to demonstrating continuous residence in the United States since October 5, 2023, and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since December 8, 2023,¹ the effective date of this redesignation of Cameroon, before USCIS may grant them TPS. DHS estimates that approximately 7,900 individuals may become newly eligible for TPS under the redesignation of Cameroon.

What Is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
 - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
 - Any other lawfully obtained immigration status or category they received while registered for TPS, as

¹ The "continuous physical presence date" (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The "continuous residence date" (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA sec. 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (CR and CPP date requirements); 8 U.S.C. 1254a(b)(2)(A); 1254a(c)(1)(A)(i–ii).

long as it is still valid beyond the date TPS terminates.

When was Cameroon designated for TPS?

Cameroon was initially designated on the basis of ongoing armed conflict and extraordinary and temporary conditions in Cameroon that prevented nationals of Cameroon from returning in safety. *See Designation of Nationals of Cameroon for Temporary Protected Status*, 87 FR 34706 (June 7, 2022).

What authority does the Secretary have to extend the designation of Cameroon for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.² The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state

² INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Cameroon for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that "the alien has been continuously physically present since the effective date of the most recent designation of the state") (emphasis added).³

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been "continuously resid[ing]" in the United States. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the "continuous residence" date for applicants for TPS under the redesignation of Cameroon shall be October 5, 2023. Initial applicants for TPS under this redesignation must also show they have been "continuously physically present" in the United States since December 8, 2023, which is the effective date of the Secretary's redesignation of Cameroon. *See* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the "continuous physical presence" requirement cannot be made until December 8, 2023, the effective date of this redesignation for Cameroon. USCIS, however, will issue employment authorization documentation, as

appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Cameroon and simultaneously redesignating Cameroon for TPS through June 7, 2025?

DHS has reviewed country conditions in Cameroon. Based on the review, including input received from DOS and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because ongoing armed conflict and extraordinary and temporary conditions supporting Cameroon's TPS designation remain. The Secretary has further determined that redesignating Cameroon for TPS under INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) is warranted and is changing the "continuous residence" and "continuous physical presence" dates that applicants must meet to be eligible for TPS. The "continuous residence" date now being October 5, 2023, and the "continuous physical presence" date now being December 8, 2023, the effective date of this redesignation of Cameroon for TPS.

Overview

Since 2014, ongoing armed conflict between the Government of Cameroon and nonstate armed groups in the Far North Region, specifically Boko Haram and the Islamic State West Africa Province (ISWAP), has resulted in killings, kidnappings, displacement, and destruction of civilian infrastructure. While battling these nonstate armed groups, the Government of Cameroon is also attempting to control the continuing secessionist crisis in the Northwest and Southwest Regions. Extraordinary and temporary conditions, including the secessionist crisis, human rights abuses by members of armed groups and forces, food insecurity, spread of disease, and mass displacement continue to prevent Cameroonian nationals (and those who last habitually resided in Cameroon) from returning to Cameroon in safety.

Scale and Impact of Conflict and Other Violence

In 2014, Boko Haram launched its first attacks in the Far North Region of Cameroon, and in 2015, a splinter group ISWAP established itself as a highly active and violent Islamic State affiliate.⁴ Cameroon continues to face

serious attacks by Boko Haram and ISWAP in the Far North Region.⁵ Recent, large-scale attacks by Boko Haram have resulted in civilian and soldier deaths, the destruction of hundreds of homes, and the looting of shops, markets, ranches, and farms.⁶ A separate attack that killed two civilians also forced the closure of a Far North hospital for several months, preventing thousands of people from accessing health services.⁷ Boko Haram has also continued to abduct children for use as child soldiers or suicide bombers.⁸ Earlier this year, ISWAP reportedly abducted 20 fishermen in the Far North Region after they refused to pay taxes levied by the group, and in another incident, ISWAP militants attacked a military outpost and stole military equipment.⁹

The Far North has also seen violence between fishing, farming, and herding

cameroon/cameroon-confronting-boko-haram (last visited July 12, 2023); Facing the Challenge of the Islamic State in West Africa Province, International Crisis Group, May 16, 2019, available at <https://www.crisisgroup.org/africa/west-africa/nigeria/273-facing-challenge-islamic-state-west-africa-province> (last visited July 12, 2023); and Boko Haram and the Islamic State West Africa Province, Congressional Research Service, Feb. 24, 2022, available at <https://sgp.fas.org/crs/row/IF10173.pdf>.

⁵ Cameroon says military deployed after new militant attack kills at least a dozen, VOA, Aug. 3, 2023, available at <https://www.voanews.com/a/cameroon-says-military-deployed-after-boko-haram-attack/7210055.html> (last visited Sept. 26, 2023); Cameroon asks for more border troops after new Boko Haram attacks, VOA, May 31, 2023, available at <https://www.voanews.com/a/cameroon-asks-for-more-border-troops-after-new-boko-haram-attacks/7116890.html> (last visited Sept. 26, 2023); Children and armed conflict; Report of the Secretary-General [A/77/895-S/2023/363], UN General Assembly, UN Security Council, June 5, 2023, available at <https://childrenandarmedconflict.un.org/document/secretary-general-annual-report-on-children-and-armed-conflict-2/>; Cameroon: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 3, 2023).

⁶ Cameroon's Large-Scale Boko Haram Attacks Leave Thousands Homeless, VOA News, April 19, 2023, available at <https://www.voanews.com/a/cameroon-s-large-scale-boko-haram-attacks-leave-thousands-homeless-/7057215.html> (last visited June 30, 2023).

⁷ Cameroon, Amnesty International, available at <https://www.amnesty.org/en/location/africa/west-and-central-africa/cameroon/report-cameroon/> (last visited July 3, 2023).

⁸ U.S. Dep't of State, 2023 Trafficking in Persons Report: Cameroon, June 15, 2023, available at <https://www.state.gov/reports/2023-trafficking-in-persons-report/cameroon/> (last visited Sept. 26, 2023); U.S. Dep't of State, 2022 Country Report on Human Rights Practices: Cameroon (Mar. 20, 2023), available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/> (last visited July 12, 2023).

⁹ The situation in Central Africa and the activities of the United Nations Regional Office for Central Africa; Report of the Secretary-General [S/2023/389], U.N. Security Council, May 21, 2023, available at <https://www.ecoi.net/en/file/local/2093063/N2313778.pdf>.

³ The extension and redesignation of TPS for Cameroon is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011); *Extension and Re-designation of Temporary Protected Status for Sudan*, 69 FR 60168 (Oct. 7, 2004); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, 62 FR 16608 (Apr. 7, 1997).

⁴ Cameroon: Confronting Boko Haram, International Crisis Group, Nov. 16, 2016, available at <https://www.crisisgroup.org/africa/central-africa/>

communities vying for limited natural resources that have been dwindling in the Lake Chad Basin region due to climate change.¹⁰ While such clashes are not new, the increasing use and accessibility of firearms due to the presence of Boko Haram and ISWAP has escalated violence and displacement.¹¹ Overall, the confluence of intercommunal violence, presence of militant groups, and increased competition over natural resources has resulted in widespread humanitarian distress including frequent thefts, destruction of property, physical attacks, extortions, murders, and kidnappings.¹²

Crisis in the Northwest & Southwest Regions

Cameroon is a majority French-speaking (Francophone) nation with two majority English-speaking (Anglophone) regions.¹³ The country continues to face a secessionist insurgency in the Anglophone areas: Northwest Region and Southwest Region.¹⁴

Anglophone separatists continue to commit human rights abuses against both government forces and civilians, engaging in killings, kidnappings, and other means of forceful control over large parts of the Anglophone regions.¹⁵ Separatists have restricted the movement of persons and goods in the areas under their control, “sometimes in a deliberate attempt to harass and intimidate the local population,” and often use weekly lockdowns called “ghost towns” during which all businesses, schools, and places of

worship must close.¹⁶ 30 women were reportedly abducted by separatists in May 2023 after participating in peaceful protests against separatist violence and taxes, with some of the women tortured, beaten, and shot.¹⁷ Separatist groups have targeted civilian infrastructure and their violence has acutely impacted on access to education.¹⁸ More than half of the schools in the Northwest and Southwest regions remain closed for the 2022–2023 school year, according to the United Nations.¹⁹ Armed groups have also attacked health care facilities, including an attack against a hospital in June 2022 that deprived 85,000 people of access to health care.²⁰

Human Rights Abuses by Government Security Forces

Reports indicate that Cameroonian government security forces have engaged in human rights violations, often in areas where they are engaged in separatist clashes. Reportedly, “Security forces have perpetrated extrajudicial killings and widespread sexual and gender-based violence, burned Anglophone villages and subjected individuals with suspected separatist ties to arbitrary detention, torture and ill-treatment.”²¹ Recently, members of the Cameroonian army killed three people and burned homes in Yer village and destroyed homes and shops in the city of Kumbo.²² Both attacks were believed to be retaliation for attacks on the military by armed separatists.²³

According to Amnesty International, “the response to the crisis from political and judicial authorities has, so far, involved further human rights violations. Instead of genuinely investigating crimes by armed separatists, authorities have accused certain individuals denouncing atrocities of being armed separatists or supporters and have arbitrarily arrested and detained them.”²⁴ Investigations into human rights abuses by authorities appear rare and, when investigations are opened, proceedings are slow or public information is unavailable.²⁵

Humanitarian Situation

The humanitarian situation in Cameroon is serious, with one out of every six people in Cameroon needing humanitarian assistance and protection, amounting to 4.7 million people.²⁶ An estimated 77 percent of the population in need of humanitarian assistance are women and children.²⁷ Moreover, an estimated 478,106 foreign nationals have sought refuge in Cameroon from other countries along with 645,746 other returnees and 1,066,254 internally displaced persons already in Cameroon.²⁸ Humanitarian access remains challenging, as armed groups hinder the movement of goods in the areas under their control, and aid workers have reported harassment from government authorities and denial of passage to areas in need.²⁹

army, armed separatists and militias, Amnesty International, July 4, 2023, available at <https://www.amnesty.org/en/documents/afr17/6838/2023/en/> (last visited July 13, 2023).

²⁴ Cameroon: Rampant atrocities amid Anglophone regions must be stopped and investigated, Amnesty International, July 3, 2023, available at <https://www.amnestyusa.org/press-releases/cameroon-rampant-atrocities-amid-anglophone-regions-must-be-stopped-and-investigated/> (last visited September 25, 2023).

²⁵ Cameroon: With or against us: People of the North-West region of Cameroon caught between the army, armed separatists and militias, Amnesty International, July 4, 2023, available at <https://www.amnesty.org/en/documents/afr17/6838/2023/en/> (last visited July 13, 2023).

²⁶ Cameroon Humanitarian Needs Overview 2023 (March 2023), Reliefweb, May 11, 2023, available at <https://reliefweb.int/report/cameroon/cameroon-humanitarian-needs-overview-2023-march-2023#:~:text=In%202023%2C%20one%20out%20of,%2C%20returnees%2C%20or%20refugees.> (last visited July 3, 2023).

²⁷ Cameroon: Situation Report, OCHA, last updated June 7, 2023, available at <https://reports.unocha.org/en/country/cameroon/> (last visited July 3, 2023).

²⁸ Cameroon Multi-Country Office: Refugees and Internally Displaced Persons, UNHCR, June 8, 2023, available at <https://reliefweb.int/map/cameroon/cameroon-multi-country-office-refugees-and-internally-displaced-persons-figures-available-31-may-2023> (last visited June 30, 2023).

²⁹ U.S. Dep’t of State, 2022 Country Reports on Human Rights Practices: Cameroon, May 21, 2023, available at <https://www.state.gov/reports/2022->

¹⁰ Conflict Analysis in Lake Chad Basin 2020–2021, U.N. Development Programme, Aug. 4, 2022, available at <https://www.undp.org/sites/g/files/zskgk326/files/2022-08/Conflict%20Analysis%20in%20the%20Lake%20Chad%20Basin.pdf>.

¹¹ Violent Extremism in the Sahel, Center for Preventive Action, March 27, 2023, available at <https://www.cfr.org/global-conflict-tracker/conflict/violent-extremism-sahel> (last visited July 6, 2023).

¹² Cameroon Humanitarian Needs Overview 2023 (March 2023), U.N. Office for the Coordination of Humanitarian Affairs (OCHA), May 11, 2023, available at <https://reliefweb.int/report/cameroon/cameroon-humanitarian-needs-overview-2023-march-2023> (last visited July 6, 2023).

¹³ A Second Look at Cameroon’s Anglophone Special Status, International Crisis Group, March 31, 2023, available at <https://www.crisisgroup.org/africa/central-africa/cameroon/b188-second-look-camerouns-anglophone-special-status> (last visited June 30, 2023).

¹⁴ A Second Look at Cameroon’s Anglophone Special Status, International Crisis Group, March 31, 2023, available at <https://www.crisisgroup.org/africa/central-africa/cameroon/b188-second-look-camerouns-anglophone-special-status> (last visited June 30, 2023).

¹⁵ Cameroon, Global Center for the Responsibility to Protect, May 31, 2023, available at <https://www.globalr2p.org/countries/cameroon/> (last visited July 3, 2023).

¹⁶ U.S. Dep’t of State, 2022 Country Reports on Human Rights Practices: Cameroon, May 21, 2023, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cameroon/> (last visited July 3, 2023).

¹⁷ Atrocity Alert No. 349: Ukraine, Cameroon and Afghanistan, Reliefweb, May 31, 2023, available at <https://reliefweb.int/report/afghanistan/atrocity-alert-no-349-ukraine-cameroon-and-afghanistan> (last visited July 13, 2023).

¹⁸ Cameroon: Events of 2022, Human Rights Watch, 2023, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 3, 2023).

¹⁹ UNICEF Education Case Study: Cameroon, July 2023, last visited October 1, 2023. <https://www.unicef.org/media/141551/file/Learning%20where%20it%20is%20difficult%20to%20learn:%20Radio%20programmes%20help%20keep%20children%20learning%20in%20Cameroon.pdf>.

²⁰ Cameroon: Events of 2022, Human Rights Watch, 2022, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 3, 2023).

²¹ Cameroon, Global Center for the Responsibility to Protect, May 31, 2023, available at <https://www.globalr2p.org/countries/cameroon/> (last visited July 3, 2023).

²² Cameroon: With or against us: People of the North-West region of Cameroon caught between the army, armed separatists and militias, Amnesty International, July 4, 2023, available at <https://www.amnesty.org/en/documents/afr17/6838/2023/en/> (last visited July 13, 2023).

²³ Cameroon: With or against us: People of the North-West region of Cameroon caught between the

The ongoing regional crises, intercommunal violence, and floods have worsened food insecurity in recent years.³⁰ An estimated three million people in Cameroon are expected to face acute food insecurity in 2023.³¹ Additionally, the fastest increases in food prices since 2008 have exacerbated challenges in this area.³² Recent data indicates that the cost of food was 9.5 percent higher in the first quarter of 2023 than at the same time in 2022.³³

Additionally, Cameroon is experiencing an outbreak of cholera. The number of reported cases had been relatively low but increased significantly in March 2023, and new cases have been reported in 29 of 58 districts nationwide.³⁴ More than 19,000 cases were reported between June 2022 and June 2023, including 1,880 confirmed cases and 450 recorded deaths.³⁵ A global cholera vaccine shortage is complicating prevention efforts.³⁶

As of May 2023, there were more than one million internally displaced persons in Cameroon, concentrated primarily in and around the Anglophone regions and the Far North Region.³⁷ Boko Haram and ISWAP's attacks in the Far North have reportedly contributed to the internal displacement of over 378,000 people as

of July 2022.³⁸ About 3,000 people were displaced in the Far North Region in March 2023 alone.³⁹

In summary, the ongoing armed conflict between Boko Haram, ISWAP, and the Government of Cameroon alongside extraordinary and temporary conditions, including the secessionist crisis, has led to significant civilian casualties and major disruptions in security and stability. This has also contributed to other extraordinary and temporary conditions that prevent Cameroonian nationals from returning to Cameroon in safety, namely the current humanitarian crisis, including human rights abuses, food insecurity, spread of disease, and mass displacement.

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Cameroon's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in the Far North region of Cameroon and, due to such conflict, requiring the return to Cameroon of Cameroonian nationals (or individuals having no nationality who last habitually resided in Cameroon) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Cameroon that prevent Cameroonian nationals (or individuals having no nationality who last habitually resided in Cameroon) from returning to Cameroon in safety, and it is not contrary to the national interest of the United States to permit Cameroonian TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Cameroon for TPS should be extended for an 18-month period, beginning on December 8, 2023, and ending on June 7, 2025. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Cameroon should be simultaneously extended and

redesignated for TPS beginning on December 8, 2023, and ending on June 7, 2025. *See* INA 244(b)(1)(A) and (C) and (b)(2), 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).

- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since October 5, 2023.

- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since December 8, 2023, the effective date of the redesignation of Cameroon for TPS.

- There are approximately 2,090 current Cameroon TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.

- It is estimated that approximately 7,900 additional individuals may be eligible for TPS under the redesignation of Cameroon. This population includes Cameroonian nationals in the United States in nonimmigrant status or without immigration status.

Notice of the Designation of Cameroon for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Cameroon's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met and it is not contrary to the national interest of the United States to permit Cameroonian TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(A) and (C), 8 U.S.C. 1254a(b)(1)(A) and (C). On the basis of this determination, I am simultaneously extending the existing designation of Cameroon for TPS for 18 months, beginning on December 8, 2023, and ending on June 7, 2025, and redesignating Cameroon for TPS for the same 18-month period. *See* INA section 244(b)(1)(A) and (C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register for TPS based on the designation of Cameroon, you must submit a Form I-821, Application for Temporary Protected Status, and pay

country-reports-on-human-rights-practices/cameroon/ (last visited July 3, 2023).

³⁰ Cameroon Food Security Outlook Update, June 2023–January 2024, Reliefweb, July 6, 2023, available at <https://reliefweb.int/report/cameroon/cameroon-food-security-outlook-update-june-2023-january-2024> (last visited July 13, 2023).

³¹ Cameroon: Situation Report, OCHA, last updated June 7, 2023, available at <https://reports.unocha.org/en/country/cameroon/> (last visited July 3, 2023).

³² Cameroon Crisis Response Plan 2023, International Organization for Migration, Jan. 19, 2023, available at <https://crisisresponse.iom.int/response/cameroon-crisis-response-plan-2023> (last visited July 3, 2023).

³³ WFP Cameroon Operational Update—January–March 2023, Reliefweb, June 14, 2023, available at <https://reliefweb.int/report/cameroon/wfp-cameroon-operational-update-january-march-2023> (last visited July 13, 2023).

³⁴ Cameroon: Increase in cholera cases, 1, ACAPS, June 29, 2023, available at https://www.acaps.org/fileadmin/Data_Product/Main_media/20230629_ACAPS_Briefing_note_Cameroon_increase_in_cholera_cases.pdf.

³⁵ Cameroon: Increase in cholera cases, 1, ACAPS, June 29, 2023, available at https://www.acaps.org/fileadmin/Data_Product/Main_media/20230629_ACAPS_Briefing_note_Cameroon_increase_in_cholera_cases.pdf.

³⁶ Cameroon: Increase in cholera cases, 1, ACAPS, June 29, 2023, available at https://www.acaps.org/fileadmin/Data_Product/Main_media/20230629_ACAPS_Briefing_note_Cameroon_increase_in_cholera_cases.pdf.

³⁷ Cameroon Multi-Country Office: Refugees and Internally Displaced Persons, UNHCR, June 8, 2023, available at <https://reliefweb.int/map/cameroon/cameroon-multi-country-office-refugees-and-internally-displaced-persons-figures-available-31-may-2023> (last visited June 30, 2023).

³⁸ Cameroon: Events of 2022, Human Rights Watch, available at <https://www.hrw.org/world-report/2023/country-chapters/cameroon> (last visited July 3, 2023).

³⁹ Cameroon's Large-Scale Boko Haram Attacks Leave Thousands Homeless, VOA News, April 19, 2023, available at <https://www.voanews.com/a/cameroon-s-large-scale-boko-haram-attacks-leave-thousands-homeless-/7057215.html> (last visited July 6, 2023).

the filing fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the “Biometric Services Fee” section of this notice.

TPS beneficiaries are eligible for an Employment Authorization Document (EAD), which proves their authorization to work in the United States. You are not required to submit Form I–765, Application for Employment Authorization, or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Cameroon TPS application (Form I–821) that was still pending as of October 10, 2023 do not need to file the application again. If USCIS approves an individual’s Form I–821, USCIS will grant the individual TPS through June 7, 2025.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1) (Oct. 1, 2020). In addition, the form instructions for the

Form I–821 and Form I–765 provide further information on requirements and fees for both initial TPS applicants and existing TPS beneficiaries who are re-registering.

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. Those who want to obtain an EAD must file a Form I–765 and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved. Beneficiaries with a Cameroonian TPS-related Form I–765 that was still pending as of October 10, 2023 do not need to file the application again. If USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through June 7, 2025.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If USCIS denies your fee waiver request, you can resubmit your TPS

application. The fee waiver denial notice will contain specific instructions about resubmitting your application.

Filing Information

USCIS offers the option to applicants for TPS under Cameroon’s designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, with their Form I–821.

Online filing: Forms I–821 and I–765 are available for concurrent filing online.⁴⁰ To file these forms online, you must first create a USCIS online account.⁴¹ However, if you are requesting a fee waiver, you cannot submit the applications online. You will need to file paper versions of the fee waiver request and the form for which you are requesting the fee waiver.

Mail filing: Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status; Form I–765, Application for Employment Authorization, if applicable; Form I–912, Request for Fee Waiver (if applicable); and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES	
All States, Territories, and District of Columbia	U.S. Postal Service (USPS): USCIS, Attn: TPS Cameroon, P.O. Box 4091, Carol Stream, IL 60197–4091. FedEx, UPS, and DHL deliveries: USCIS, Attn: TPS Cameroon (Box 4091), 2500 Westfield Drive, Elgin, IL 60124–7836.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable

documentation and other requirements for applying (*i.e.*, registering) for TPS on the USCIS website at <https://www.uscis.gov/tps> under “Cameroon.”

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at <https://www.uscis.gov/i-131>. You may file Form

I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

⁴⁰ Find information about online filing at “Forms Available to File Online,” <https://www.uscis.gov/file-online/forms-available-to-file-online>.

⁴¹ https://myaccount.uscis.gov/users/sign_up.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I-131 together with a Form I-821, Application for Temporary Protected Status.	The address provided in Table 1.
Filing Form I-131 based on a pending or approved Form I-821, and you are using the U.S. Postal Service (USPS): You must include a copy of the receipt notice (Form I-797 or I-797C) showing we accepted or approved your Form I-821.	USCIS, Attn: I-131 TPS, P.O. Box 660167, Dallas, TX 75266-0867.
Filing Form I-131 based on a pending or approved Form I-821, and you are using FedEx, UPS, or DHL: You must include a copy of the receipt notice (Form I-797 or I-797C) showing we accepted or approved your Form I-821.	USCIS, Attn: I-131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I-912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at <https://www.dhs.gov/publication/dhsuscispia-060-customer-profile-management-service-cpms>.

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at uscis.gov, or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>. If your Form I-765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at <https://egov.uscis.gov/e-request/Intro.do> or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Am I eligible to receive an automatic extension of my current EAD through December 7, 2024, through this Federal Register notice?

Yes. Regardless of your country of birth, provided that you currently have a Cameroon TPS-based EAD that has the notation A-12 or C-19 under Category and a “Card Expires” date of December

7, 2023, this **Federal Register** notice automatically extends your EAD through December 7, 2024. Although this **Federal Register** notice automatically extends your EAD through December 7, 2024, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I-9?

You can find the Lists of Acceptable Documents on Form I-9, Employment Eligibility Verification, as well as the Acceptable Documents web page at <https://www.uscis.gov/i-9-central/acceptable-documents>. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I-9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central web page at <https://www.uscis.gov/I-9Central>. An EAD is an acceptable document under List A. See the section “How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?” of this **Federal Register** notice for further information. If your EAD states A-12 or C-19 under Category and has a “Card Expires” date of December 7, 2023, it has been

extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I-9 through December 7, 2024, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Cameroon for you to be eligible for this extension.

What documentation may I present to my employer for Form I-9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-examine your automatically extended EAD to check the “Card Expires” date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD expiration date in Section 2 of Form I-9. See the section “What updates should my current employer make to Form I-9 if my EAD has been automatically extended?” of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I-9 and to show that USCIS has automatically extended your EAD through December 7, 2024, but you are not required to do so. The last day of the automatic EAD extension is December 7, 2024. Before you start work on December 8, 2024, your employer is required by law to reverify your employment authorization on Form I-9. By that time, you must present any document from List A or any document from List C on Form I-9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the

Form I-9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through June 7, 2025, then you must file Form I-765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation such as evidence of my status or proof of my Cameroonian citizenship or a Form I-797C showing that I registered for TPS for Form I-9 completion?

No. When completing Form I-9, employers must accept any documentation you choose to present from the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Cameroonian citizenship or proof of registration for TPS when completing Form I-9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the "Note to Employees" section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I-9 for a new job before December 8, 2024:

1. For Section 1, you should:
 - a. Check "A noncitizen authorized to work until" and enter December 7, 2024, as the "expiration date"; and
 - b. Enter your USCIS number or A-Number where indicated. (Your EAD or

other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:
 - a. Determine if the EAD is auto-extended by ensuring it is in category A-12 or C-19 and has a "Card Expires" date of December 7, 2023;
 - b. Write in the document title;
 - c. Enter the issuing authority;
 - d. Provide the document number; and
 - e. Write December 7, 2024, as the expiration date.

Before the start of work on December 8, 2024, employers must reverify the employee's employment authorization on Form I-9.

What updates should my current employer make to Form I-9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A-12 or C-19 and has a "Card Expires" date of December 7, 2023. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I-9 as follows:

1. Write EAD EXT and December 7, 2024, as the last day of the automatic extension in the Additional Information field; and
2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By December 8, 2024, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I-9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I-9 into the document number field in E-Verify. Employers

should enter December 7, 2024, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiring" alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on December 8, 2024, you must reverify their employment authorization on Form I-9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at IER@usdoj.gov or get more information online at www.justice.gov/ier.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov. USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER)

Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I-9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to take action to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I-9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS and E-Verify websites at <https://www.uscis.gov/i-9-central> and <https://www.e-verify.gov>.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I-797C, Notice of Action reflecting receipt of a

Form I-765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A-12 or C-19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Cameroon;
- Your Form I-94, Arrival/Departure Record;
- Your Form I-797, Notice of Action, reflecting approval of your Form I-765; or
- Form I-797 or Form I-797C, Notice of Action, reflecting approval or receipt of a past or current Form I-821, if you received one from USCIS.

Check with the government agency requesting documentation regarding which document(s) the agency will accept. Some state and local government agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify that an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I-797, Form I-797C, or Form I-94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

- a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number, or Form I-94 number;
- b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and
- c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification

steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at <https://save.uscis.gov/casecheck/>. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as A-number, USCIS number, or Form I-94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, <https://www.uscis.gov/save>, has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2023-22375 Filed 10-6-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-24]

60-Day Notice of Proposed Information Collection: Project Approval for Single-Family Condominiums, OMB Control No.: 2502-0610

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* December 11, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Written comments and recommendations for the proposed information collection can be submitted 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 by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email; Colette.Pollard@hud.gov, telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech 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. Pollard.

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: Project Approval for Single-Family Condominiums.

OMB Approval Number: 2502–0610.
Type of Request: Revision of currently approved collection.

Form Number: HUD–9991A–LL, FHA Condominium Loan Level Certification; HUD–9991B–SUA, FHA Condominium Single-Unit Approval Questionnaire & Certification; HUD–9992, FHA Condominium Project Approval Questionnaire; HUD–92544, Warranty of Completion of Construction; HUD–92541, Builder’s Certification of Plans, Specifications, and Site; HUD–96029, Condominium Rider.

Description of the need for the information and proposed use: This collection package seeks to renew and revise collection forms, HUD–9992 FHA Condominium Project Approval Questionnaire, to process condominium project approval applications, HUD–9991A–LL, FHA Condominium Loan Level Certification to process loan level approvals and the HUD–9991B–SUA, FHA Single-Unit Approval Questionnaire & Certification to process single-unit approvals. These forms are needed to determine if a condominium project is eligible for FHA project

approval and if a unit in an approved or unapproved condominium project is eligible for FHA-insured financing. The existing HUD–9992, FHA Condominium Project Approval Questionnaire and the HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire have been revised to make the questionnaires more adaptable to future policy changes and to provide clarity without increasing the public burden. HUD is seeking feedback for sections of the HUD–9992 pertaining to Financial Stability and Controls that relate to Special Assessments, Deferred Maintenance, and independent sustainability of a completed phase under Legal Phasing. The HUD–92544, Warranty of Completion of Construction and HUD–96029, Condominium Rider were updated to comply with the Privacy Act Notice requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 122,155.

Estimated Number of Responses: 122,155.

Frequency of Response: One-time for each condominium project approval or recertification, and one-time for each loan level approval and Single-Unit Approval.

Average Hours per Response: .49 hours (varies by form and approval type: project, loan level approval and Single-Unit approval).

Total Estimated Burdens:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
OMB 2502–0610	122,155	Once per loan	122,155	7.15	59,985	59.77	3,585,223.95

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.

Jeffrey D. Little,
General Deputy Assistant Secretary for Housing.
[FR Doc. 2023–22415 Filed 10–6–23; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–67]

30-Day Notice of Proposed Information Collection: Final Endorsement of Credit Instrument, OMB Control No.: 2502–0016

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:* November 9, 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: Colette Pollard, 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov; telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: 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 December 15, 2022 at 87 FR 76637.

A. Overview of Information Collection

Title of Information Collection: Final Endorsement of Credit Instrument.
OMB Approval Number: 2502–0016.
Type of Request: Reinstatement to be discontinued.

Form Number: HUD–92023.
Description of the need for the information and proposed use: This information collection is being discontinued. The form HUD–92023, is being transferred to OMB 2502–0598.

Respondents: Business or other for-profit, Not-for-profit institutions,

contractors, mortgagors/borrowers, and mortgagees/lenders.

Estimated Number of Respondents: 1,472.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 1,472.

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.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023–22420 Filed 10–6–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–63]

30-Day Notice of Proposed Information Collection: Land Survey Report for Insured Multifamily Projects (Form HUD–92457), OMB Control No: 2502–0010

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:* November 9, 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: Colette Pollard, 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov; telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: 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 November 22, 2022 at 87 FR 71350.

A. Overview of Information Collection

Title of Information Collection: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Type of Request: Reinstatement to be discontinued.

Form Number: HUD-92457.

Description of the need for the information and proposed use: The information collection is being reinstated to be discontinued. The Form HUD-92457, HUD's Survey Instructions and Report for Insured Multifamily has been deleted from this collection due to duplication and is a loan closing document found under OMB-2502-0598.

Respondents: Profit motivated, non-profit.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 400.

Frequency of Response: 2.

Average Hours per Response: 0.50.

Total Estimated Burden: 200.

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.

(5) Ways to minimize the burden of the collection of information on those who 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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023-22418 Filed 10-6-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR-6430-N-01]

Availability of HUD's Fiscal Year 2021 Service Contract Inventory

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the availability to the public of service contracts awarded by HUD in Fiscal Year (FY) 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Akinsola A. Ajayi, Assistant Chief Procurement Officer, Office of Policy, Systems and Risk Management, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202-402-6728 (this is not a toll-free number) and fax number 202-708-8912. 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>.

SUPPLEMENTARY INFORMATION: In accordance with section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111-117, approved December 16, 2009, 123 Stat. 3034, at 123 Stat. 3216), HUD is publishing this notice to advise the public of service contracts inventories that were awarded in FY 2021. The inventories are organized by function and are reviewed by HUD to better understand how contracted services are used to support HUD's primary mission, to insure HUD maintains an adequate workforce for operations and to research whether contractors were performing inherently governmental functions.

The inventory was developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office Federal Procurement Policy (OFPP). OFPP's guidance is available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>.

HUD has posted its inventory and a summary of the inventory on the Department of Housing and Urban Development's homepage at the following link: <http://portal.hud.gov/>

hudportal/HUD?src=/program_offices/cpo/sci.

Dr. Akinsola A. Ajayi,

Assistant Chief Procurement Officer.

[FR Doc. 2023-22395 Filed 10-6-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-62]

30-Day Notice of Proposed Information Collection: Property Disposition Foreclosure Sale Bid Kit, OMB Control No.: 2502-NEW

AGENCY: Office of Policy Development and Research, 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:* November 9, 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: Colette Pollard, 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech 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. Pollard.

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 June 15, 2023 at 88 FR 39267.

A. Overview of Information Collection

Title of Information Collection: Property Disposition Foreclosure Sale Bid Kit.

OMB Approval Number: N/A.

OMB Expiration Date: N/A.

Type of Request: New Collection.

Form Number: HUD-5994—

Certificate of Substantial Compliance and HUD-5995—Attachment B Acknowledgment By Bidder Unsub.

Description of the need for the information and proposed use: The foreclosure sale bid kit is necessary for the successful high bidder to submit application for approval to become the new owner of the foreclosed property.

Respondents: High Bidder for each sale conducted, Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Number of Respondents: 10 per year, 1 per sale.

Estimated Number of Responses: 10 per year, 1 per sale.

Frequency of Response: 1 per respondent.

Average Hours per Response: .15 hours.

Total Estimated Burden: for agency <10 hrs/for public 1 hour.

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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. 3507.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023-22414 Filed 10-6-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-61]

30-Day Notice of Proposed Information Collection: Section 8 Management Assessment Program (SEMAP) Certification; OMB No. 2577-0215

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 30 days of public comment.

DATES: *Comments Due Date:* November 9, 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: Colette Pollard, 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:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov, telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech 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. Pollard.

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 May 9, 2023 at 88 FR 29938.

A. Overview of Information Collection

Title of Information Collection: Section 8 Management Assessment Program (SEMAP).

OMB Control Number: 2577-0215.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Agency Form Numbers: HUD-52658.

Description of the Need for the Information and Proposed Use: On an annual basis (or every two years for small agencies) PHAs are required to submit a SEMAP certification (form HUD-52648) electronically into the Information Management System/Public and Indian Housing Information Center (IMS/PIC). There is a maximum of 15 indicators that are either verified through PIC data or an on-site or off-site confirmatory review. HUD uses the PHA's SEMAP certification, together with other available data, to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to each PHA administering an HCV program. HUD rates a PHA on each SEMAP indicator, completes a PHA SEMAP profile identifying any program management deficiencies and assigns an overall performance rating. A PHA's written report of correction of a SEMAP

deficiency is used as documentation that the PHA has taken action to address identified program weaknesses. Where HUD assigns an overall performance

rating of troubled, the PHA's corrective action plan is used to monitor the PHA's progress on program improvements.

Respondents: Public Housing Agencies.
Estimated Annual Reporting and Recordkeeping Burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hrs per response	Total hrs	Regulatory reference
SEMAP Certification	2,167	1	2,167	12	26,004	985.101
Corrective Action Plan	80	1	80	10	800	985.107(c)
Report on Correction of SEMAP Deficiency	542	1	5	2	1,084	985.106
Total Annual Burden					27,888	

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023-22337 Filed 10-6-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-HQ-FAC-2023-N076;
FX.IA167209TRG00-FF09W12000-223]**

Theodore Roosevelt Genius Prize Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The U.S. Fish and Wildlife Service gives notice of a public meeting of the Theodore Roosevelt Genius Prize Advisory Council (Council), in accordance with the Federal Advisory Committee Act.

DATES: The Council will meet Tuesday, November 14, 2023, through Thursday, November 16, 2023, from 9 a.m. to 4 p.m. (eastern time).

Registration: Registration is required. The deadline for registration is November 7, 2023.

Accessibility: The deadline for accessibility accommodation requests is November 7, 2023. Please see Accessibility Information, below.

ADDRESSES: The meeting will be held in Room 5160 of the Stewart Lee Udall Department of the Interior Building, 1849 C Street NW, Washington, DC 20240. Virtual participation will also be available via broadcast over the internet. To register, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) or visit the Council's website at <https://www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council>.

FOR FURTHER INFORMATION CONTACT: Stephanie Rickabaugh, Designated Federal Officer, by email at Stephanie_Rickabaugh@fws.gov, or by telephone at (571) 421-6758. 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 Theodore Roosevelt Genius Prize Advisory Council (Council) was established by the John D. Dingell, Jr., Conservation, Management, and Recreation Act (Pub. L. 116-9, as amended by the America's Conservation Enhancement Act (Pub. L. 116-188)); and authorized by the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719). The Council's purpose is to advise the Secretary of the Interior regarding any opportunities for technological innovation in six focus areas: preventing wildlife poaching and trafficking, promoting wildlife conservation, managing invasive species, protecting endangered species, non-lethally managing human-wildlife conflict, and reducing human-predator conflict.

This meeting is open to the public. The meeting agenda will include presentations from the 2023 Theodore Roosevelt Genius Prize winners, possible reports from subcommittees, and other business. The Council will also hear public comment if members of the public request to comment. The agenda and other related meeting information will be posted on the Council's website at <https://www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council>.

Public Input

If you wish to provide oral public comment or provide a written comment for the Council to consider, contact the Council's Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than Tuesday, November 7, 2023.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be

limited. Interested parties should contact the Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this meeting. Requests to address the Council during the meeting will be accommodated in the order the requests are received. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Designated Federal Officer up to 30 days following the meeting.

Accessibility Information

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than November 7, 2023, to give the U.S. Fish and Wildlife Service sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Ch. 10)

Paul Rauch,

Assistant Director, Wildlife and Sport Fish Restoration, U.S. Fish and Wildlife Service.

[FR Doc. 2023–22381 Filed 10–6–23; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1270]

Certain Casual Footwear and Packaging Thereof; Notice of Correction of a Commission Opinion

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) is correcting two typos in its confidential Opinion of September 14, 2023, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On page 40, line 2 and page 43, line 13 of its confidential Opinion, the Commission replaces “Amoji” with “La Modish” for La Modish Boutique of West Covina, California, one of four respondents previously found to be in default. See Order No. 58 (May 20, 2022), *unreviewed by Comm’n Notice* (June 10, 2022).

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 4, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22423 Filed 10–6–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 29, 2023 the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Utah in the lawsuit entitled *United States v. Smith and Edwards Company, et al.*, Civil Action No.1:23–cv–00108–HCN.

The United States filed this lawsuit under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. 9607, for the recovery of costs incurred or to be incurred by the United States in response to the release or

threatened release of hazardous substances at the Ogden Swift Building Superfund Site located in Ogden, Utah (the “Site”). The proposed complaint and consent decree seek to recover, under section 107(a) of CERCLA, EPA’s unreimbursed response costs in connection with an emergency removal action at the Ogden Swift Building Superfund Site in Ogden, Utah. The proposed Consent Decree resolves all claims in the proposed Complaint against two potentially responsible parties, Smith and Edwards (“S&E”) and the Ogden City Redevelopment Agency (“RDA”) (collectively, the “Defendants”), as well as a potential counterclaim against the Settling Federal Agencies (comprised of the Defense Logistics Agency, DLA Disposition Services, the Department of the Army, the Department of the Navy and the Department of the Air Force).

Under the proposed Consent Decree, S&E will pay \$2,290,065 and RDA will pay \$300,000. The Settling Federal Agencies will pay \$2,290,065 to resolve a potential counterclaim against the United States. Together, these amounts represent approximately 96% of EPA’s unreimbursed response costs through June 2022. The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Smith and Edwards Company, et al.*, D.J. Ref. No. 90–11–3–12449. 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, D.C. 20044–7611.

During the public comment period, the Consent Decree 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 Consent Decree 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 \$8.25 (25 cents per page

reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023-22344 Filed 10-6-23; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

[OMB Number 1122-0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Progress Report for the STOP Formula Grants Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on August 1, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 9, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Catherine Poston, Office on Violence Against Women, at 202-514-5430 or Catherine.poston@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Supervised Visitation and Safe Exchange Guiding Principles Reflection Survey for Past and Current Grantees.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-XXXX. U.S. Department of Justice, Office on Violence Against Women.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public- The affected public includes current and former JFF Program grantees. Abstract: Congress acknowledged the need for available and appropriate supervised visitation and exchange services for child(ren) and adult victims of domestic violence and established the Safe Havens: Supervised Visitation and Safe Exchange Grant Program⁶ (Supervised Visitation Program) as part of the Violence Against Women Act of 2000. This federal grant program is designed to increase

supervised visitation and exchange services for victims of domestic violence, sexual assault, stalking, dating violence, and child abuse. The Supervised Visitation Program seeks to shift the focus of supervised visitation and exchange in domestic violence cases in an important way: where the traditional purpose of supervised visitation was to keep the children safe while allowing continued access by the parents, Supervised Visitation Program grantees, funded by the United States Department of Justice, Office on Violence Against Women (OVW), must consider as their highest priority the safety of both children and adult victims. In 2007, OVW announced Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Guiding Principles) designed to guide the development and administration of Supervised Visitation Program centers with an eye toward addressing the needs of child(ren) and adult victims of domestic violence in visitation and exchange settings. The Guiding Principles look beyond the visitation setting to address how communities funded under the Supervised Visitation Program should address domestic violence in the larger community. In addition, the Guiding Principles provide guidance for communities developing or enhancing supervised visitation and exchange services for families experiencing domestic violence, child abuse, sexual assault, dating violence, or stalking; serve as a reference for drafting policies and protocols for these services; and assist collaborations with shaping, informing, and reviewing local supervised visitation and exchange services to address domestic violence. In the Violence Against Women Reauthorization Act of 2013, Congress authorized the Justice for Families (JFF) Program which supports activities to improve the capacity of communities and courts to respond to families impacted by domestic violence, dating violence, sexual assault, stalking, and in some cases child sexual abuse with court based and court-related programs, supervised visitation and safe exchange by and between parents, training and technical assistance for people who work with families in the court system, civil legal services, and the provision of resources in juvenile court matters. The JFF Program includes purpose areas previously authorized under the Supervised Visitation Program. OVW has decided to update to reimagine the Guiding Principles to reflect improved best practices for families experiencing domestic violence, language access and

serving underserved communities. The purpose of this information collection is to provide valuable information from current and former Supervised Visitation Program and JFF Programs grantees to inform the process of updating the Guiding Principles. The type of survey questions on will include Likert scale questions and open-ended questions regarding equal regard for the safety of children and adult victims; valuing multiculturalism and diversity; understanding domestic violence nature, dynamics and impact; respectful and fair interaction; community collaboration; and advocacy.

5. *Obligation to Respond:* The obligation to respond is required to obtain/retain a benefit.

6. *Total Estimated Number of Respondents:* 240.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* One time.

9. *Total Estimated Annual Time Burden:* 120 hours.

10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: October 4, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-22430 Filed 10-6-23; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Examination and/or Treatment (LS-1)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 9, 2023.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202-693-6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form LS-1 is used by employers to authorize medical treatment for injured workers and by claimants to report findings of physical examinations and treatment recommended. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 7, 2023 (88 FR 43401).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OWCP.

Title of Collection: Request for Examination and/or Treatment (LS-1).

OMB Control Number: 1240-0029.

Affected Public: Individuals or households; private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 236.

Total Estimated Number of Responses: 236.

Total Estimated Annual Time Burden: 129 hours.

Total Estimated Annual Other Costs Burden: \$8,850.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023-22330 Filed 10-6-23; 8:45 am]

BILLING CODE 4510-CF-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (23-104)]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National Aeronautics and Space Administration is issuing public notice of its proposal to modify a previously noticed system of records NASA Health Information Management System/NASA 10HIMS. Modifications are described below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period, if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546-0001, (757) 864-7998, NASA-PAOfficer@nasa.gov.

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864-7998, NASA-PAOfficer@nasa.gov.

SUPPLEMENTARY INFORMATION: This notice incorporates revised NASA Standard Routine Uses, removes two electronic system locations, and includes minor editorial changes.

William Edwards-Bodmer,
NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Health Information Management System, NASA 10HIMS.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records of Medical Clinics/Units and Environmental Health Offices are maintained at:

- Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA), Washington, DC 20546–0001
 - Ames Research Center (NASA), Moffett Field, CA 94035–1000
 - Armstrong Flight Research Center (NASA), PO Box 273, Edwards, CA 93523–0273
 - John H. Glenn Research Center at Lewis Field (NASA), 21000 Brookpark Road, Cleveland, OH 44135–3191
 - Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001
 - Lyndon B. Johnson Space Center (NASA), Houston, TX 77058–3696
 - John F. Kennedy Space Center (NASA), Kennedy Space Center, FL 32899–0001
 - Langley Research Center, (NASA), Hampton, VA 23681–2199
 - George C. Marshall Space Flight Center (NASA), Marshall Space Flight Center, AL 35812–0001
 - John C. Stennis Space Center (NASA), Stennis Space Center, MS 39529–6000
 - Michoud Assembly Facility (NASA), PO Box 29300, New Orleans, LA 70189
 - Wallops Flight Facility (NASA), Wallops Island, VA 23337
- Electronic records are also hosted at:
- CORITY Amazon Web Services (AWS) US East region, 410 Terry Avenue North, Seattle, WA 98109

SYSTEM AND SUBSYSTEM MANAGER(S):

Chief Health and Medical Officer at NASA Headquarters (see System Location above for address).

Subsystem Managers:

- Director Health and Medical Systems, Occupational Health at NASA Headquarters (see System Location above for address);
- Chief, Space Medicine Division at NASA Johnson Space Center (see System Location above for address);
- Occupational Health Contracting Officer Representatives at NASA Ames Research Center, (see System Location above for address);
- NASA Armstrong Flight Research Center (see System Location above for address);
- NASA Goddard Space Flight Center (see System Location above for address);
- NASA Kennedy Space Center (see System Location above for address);
- NASA Langley Research Center (see System Location above for address);

- NASA Glenn Research Center (see System Location above for address);
- NASA Marshall Space Flight Center (see System Location above for address);
- NASA Jet Propulsion Laboratory (see System Location above for address);
- NASA Stennis Space Center (see System Location above for address);
- Michoud Assembly Facility (NASA) (see System Location above for address); and
- Wallops Flight Facility (NASA) (see System Location above for address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 5 U.S.C. 7901—Health service programs;
- 51 U.S.C. 20113 (a)—Powers of the Administration in performance of functions to make and promulgate rules and regulations;
- 44 U.S.C. 3101—Records management by agency heads; general duties;
- 42 CFR part 2—Confidentiality of substance use disorder patient records.

PURPOSE(S) OF THE SYSTEM:

In order to ensure a healthy environment and workforce, information in this system of records is maintained on anyone receiving (1) exams for general wellness, (2) occupational clearances or determination of fitness for duty, (3) behavioral health assistance, (4) workplace surveillance for potential human exposure within NASA to communicable diseases and hazards such as noise and chemical exposure, repetitive motion, and (5) first aid or medical care for onsite illness or injuries through a NASA clinic outreach.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on (1) NASA employees and applicants; (2) employees from other agencies and military detailees working at NASA; (3) active or retired astronauts and active astronaut family members; (4) other space flight personnel on temporary or extended duty at NASA; (5) contractor personnel; (6) Space Flight Participants and those engaged in commercial use of NASA facilities, (7) civil service and contractor family members; and (8) visitors to NASA Centers who use clinics or ambulance services for emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain demographic data and private health information:

- (1) Wellness records including but not limited to exams provided for continuing healthcare, documentation

of immunizations and other outreach records.

(2) Fitness for duty and/or exposure exams/surveillance including but not limited to ergonomics, hazardous materials, radiation, noise, communicable diseases and other applicable longitudinal surveillance.

(3) Qualification records including the use of offsite or onsite exams to determine suitability for duties.

(4) Behavioral health and employee assistance records.

(5) Records of first aid, contingency response, or emergency care, including ambulance transportation.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from individuals themselves, physicians, and previous medical records of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Under the following routine uses that are unique to this system of records, information in this system may be disclosed: (1) to external medical professionals and independent entities to support internal and external reviews for purposes of medical quality assurance; (2) to private or other government health care providers for consultation, referral, or mission medical contingency support; (3) to the Office of Personnel Management, Occupational Safety and Health Administration, and other Federal or State agencies as required in accordance with the Federal agency's special program responsibilities; (4) to insurers for referrals or reimbursement; (5) to employers of non-NASA personnel in support of the Mission Critical Space Systems Personnel Reliability Program; (6) to international partners for mission support and continuity of care for their employees pursuant to NASA Space Act agreements; (7) to non-NASA personnel performing research, studies, or other activities through arrangements or agreements with NASA; (8) to the public of pre-space flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (9) to the public, limited to the crewmember's name and the fact that a medical condition exists, if a flight crewmember is, for medical reasons, unable to perform a scheduled public event following a space flight mission/landing; and (10) to the public to advise

of medical conditions arising from accidents, consistent with NASA regulations.

In addition, information may be disclosed under the following NASA Standard Routine Uses, which are standard for many NASA systems and are compatible with the purpose for which the Agency collected the information:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or

any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the

recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in multiple formats including paper, digital, micrographic, photographic, and as medical recordings such as electrocardiograph tapes, x-rays and strip charts.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved from the system by the individual's name, date of birth, or unique assigned Patient Identification Numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in Agency files and destroyed in accordance with NASA Records Retention Schedule 1, Items 126 and 127, and NASA Records Retention Schedule 8, Item 57.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained on secure servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act

of 2014 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet, or remotely via a secure Virtual Private Network (VPN) connection requiring two-factor token authentication using NASA-issued computers or via employee PIV badge authentication from NASA-issued computers. The CORITY AWS Data Center and Salesforce Government Cloud and Disaster Recovery Center maintain documentation and verification of commensurate safeguards in accordance with FISMA, NASA Procedural Requirements (NPR) 2810.1A, and NASA ITS–HBK–2810.02–05. Non-electronic records are secured in locked rooms or files.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.*, first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.*, first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data

concerning the requester, *e.g.*, first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

2020–27051, 85 FR 79224, pp. 79224–79227.

[FR Doc. 2023–22412 Filed 10–6–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 44 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; travisd@arts.gov, or call 202–682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

Dance (review of applications): This meeting will be closed.

Date and time: November 1, 2023; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 1, 2023; 3:00 p.m. to 5:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 2, 2023; 12:00 p.m. to 2:00 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 2, 2023; 3:00 p.m. to 5:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 3, 2023; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 3, 2023; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 7, 2023; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 7, 2023; 2:30 p.m. to 4:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 8, 2023; 11:30 a.m. to 1:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 8, 2023; 12:00 p.m. to 2:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 8, 2023; 2:30 p.m. to 4:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 9, 2023; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 9, 2023; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 9, 2023; 4:00 p.m. to 6:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 13, 2023; 11:30 a.m. to 1:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2023; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 13, 2023; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 13, 2023; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2023; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 14, 2023; 11:30 a.m. to 1:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 14, 2023; 1:00 p.m. to 3:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 14, 2023; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 14, 2023; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 14, 2023; 4:00 p.m. to 6:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 15, 2023; 11:30 a.m. to 1:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2023; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2023; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 12:00 p.m. to 2:00 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 1:00 p.m. to 3:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 1:30 p.m. to 3:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 16, 2023; 4:00 p.m. to 6:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 17, 2023; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 17, 2023; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 20, 2023; 12:00 p.m. to 2:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 20, 2023; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 20, 2023; 3:00 p.m. to 5:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 20, 2023; 3:00 p.m. to 5:00 p.m.

Literary Arts (review of applications): This meeting will be closed.

Date and time: November 21, 2023; 12:00 p.m. to 2:00 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: November 29, 2023; 11:00 a.m. to 1:00 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: November 29, 2023; 2:30 p.m. to 4:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: November 30, 2023; 11:00 a.m. to 1:00 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: November 30, 2023; 2:30 p.m. to 4:30 p.m.

Dated: October 4, 2023.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2023–22409 Filed 10–6–23; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Thursday, November 16, 2023, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the

National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after January 1, 2024. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: October 4, 2023.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2023–22398 Filed 10–6–23; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 9, 2023. This application may be inspected by

interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703-292-4479, or ACApermits@nsf.gov.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. Applicant

Permit Application: 2024-012

Robin West, VP & GM Expeditions, Seabourn Quest, Seabourn Cruise Line Ltd., 450 Third Ave. W., Seattle, WA 98119.

Activity for Which Permit Is Requested

Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several mitigation measures to reduce environmental impacts and prevent against loss of the quadcopter include painting the them a high-visibility color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and an "auto go home" feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; ensuring that the separation between the operator and quadcopter does not exceed an operational range of 500 meters; and implementing biosecurity measures by using disinfecting agents before and

after each flight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location

Antarctic Peninsula Region.

Dates of Permitted Activities

November 1, 2023–March 31, 2024.

2. Applicant

Permit Application: 2024-013

Daniel Villa, Sea Shepherd Global, 1217 S 9th St, Tacoma, WA 98405.

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Permit for waste management activities associated with use of remotely piloted aircrafts (RPAs) in Antarctica. Aircrafts will be used for documenting krill fishery activities only. RPAs will not be flown over any concentrations of wildlife, Antarctic Specially Protected or Managed Areas or Historic Sites and Monuments without appropriate authorization. Aircraft are only to be flown by experienced, pre-approved pilots in fair weather conditions and in the presence of an observer, who will always maintain visual line of sight with the aircraft during operation. Mitigating measures are in place to prevent loss of the aircraft such as conducting site assessments in advance of deployment and having alternative landing sites.

Location

Antarctic Peninsula Region.

Dates of Permitted Activities

January 5, 2023–February 15, 2024.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023-22366 Filed 10-6-23; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0001]

Sunshine Act Meetings

TIME AND DATE: Week of October 2, 2023.

PLACE: Via Teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of October 2, 2023

Thursday, October 5, 2023

9:45 a.m. Affirmation Session (Public Meeting) (Tentative), Nuclear Fuel Services, Inc. (License Amendment

Application), Appeal of LBP-23-2 (Tentative), (Contact: Wesley Held: 301-287-3591)

ADDITIONAL INFORMATION: By a vote of 4-0 on October 4, 2023, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on October 5, 2023. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode at <https://www.nrc.gov/pmns/mtg>.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Betty.Thweatt@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 4, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023-22443 Filed 10-5-23; 11:15 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2023–0136]

Notice of Intent To Conduct Scoping Process and Prepare Environmental Impact Statement; Energy Harbor Corp.; Energy Harbor Generation LLC.; Energy Harbor Nuclear Corp.; Perry Nuclear Power Plant, Unit 1**AGENCY:** Nuclear Regulatory Commission.**ACTION:** Intent to conduct scoping process and prepare environmental impact statement; public scoping meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will conduct a scoping process to gather information necessary to prepare an environmental impact statement (EIS) to evaluate the environmental impacts for the license renewal of the Facility Operating License No. NPF–58 for Perry Nuclear Power Plant, Unit 1. The NRC is seeking public comment on this action and has scheduled an in-person public scoping meeting, followed by a virtual one.

DATES: The NRC will hold two public scoping meetings, one through online webinar and teleconference call and one in-person near the facility, including a presentation on the license renewal process and a transcribed public comment session. The virtual meeting will be held October 19, 2023, at 2 p.m. eastern time (ET). The in-person meeting will be held October 25, 2023, at 6:30 p.m. ET at the Perry Public Library, 3753 Main St., Perry, OH 44081. Details on both meetings can be found on the NRC's Public Meeting Schedule at: <https://www.nrc.gov/pmns/mtg>. Submit comments on the scope of the EIS by November 9, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. See section IV, "Public Scoping Meeting," of this notice for additional information.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://regulations.gov> and search for Docket ID NRC–2023–0136. 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.

- *Email:* Comments may be submitted to the NRC electronically using the email address PerryEnvironmental@nrc.gov.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT:

Lance Rakovan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2589, email: Lance.Rakovan@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC–2023–0136 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://regulations.gov> and search for Docket ID NRC–2023–0136.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if it is available in ADAMS) is provided the first time that it is referenced.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. ET, Monday through Friday, except Federal holidays.

- *Public Library:* A copy of the license renewal application for Perry, including the environmental report (ER), will be available for public review

at the following public library location: Perry Public Library, 3753 Main St., Perry, OH 44081.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0136 in your comment submission.

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

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

II. Discussion

By letter dated July 3, 2023 (ADAMS Accession No. ML23184A081), Energy Harbor Nuclear Corp. (Energy Harbor or the applicant), doing business as Energy Harbor Nuclear Generation LLC., submitted to the NRC an application for license renewal of Facility Operating License No. NPF–58 for Perry Nuclear Power Plant, Unit 1, for an additional 20 years of operation. This submission initiated the NRC's proposed action of determining whether to grant the license renewal application. Perry is a boiling water reactor designed by General Electric and is located 35 miles NE of Cleveland, OH on the banks of Lake Erie. The current facility operating license for Unit 1 expires at midnight on November 7, 2026. The license renewal application was submitted pursuant to part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and seeks to extend the renewed facility operating license for Unit 1 to midnight on November 7, 2046. A notice of receipt and availability of the application was published in the **Federal Register** on August 9, 2023 (88 FR 53933). A notice of acceptance for docketing of the application and of opportunity to

request a hearing was published in the **Federal Register** on September 29, 2023 (88 FR 67373) and is available on the Federal rulemaking website (<https://www.regulations.gov>) by searching for Docket ID NRC–2023–0136.

III. Request for Comment

This notice informs the public of the NRC's intention to conduct environmental scoping and prepare an EIS related to the license renewal application for Perry, and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29, "Scoping-environmental impact statement and supplement to environmental impact statement," and 10 CFR 51.116 "Notice of Intent."

The regulations in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," allow agencies to use their National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA) process to fulfill the requirements of Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, *et seq.*) (NHPA). Therefore, pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation required for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Perry submitted an ER as part of the license renewal application. The ER was prepared pursuant to 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," and is publicly available in ADAMS under Accession No. ML23184A081. The ER will also be available for viewing at <https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. In addition, the license renewal application, including the ER, will be available for public review at the Perry Public Library, 3753 Main St., Perry, OH 44081.

The NRC intends to gather the information necessary to prepare a plant-specific supplement to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (ADAMS Package Accession No. ML13107A023) (GEIS), related to the license renewal application for Perry. The NRC is required by 10 CFR 51.95 to prepare a plant-specific supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA

and the NRC's regulations at 10 CFR part 51.

The supplement to the GEIS will evaluate the environmental impacts of license renewal for Perry, and reasonable alternatives thereto. Possible alternatives to the proposed action include the no action alternative and reasonable alternative energy sources.

As part of its environmental review, the NRC will first conduct a scoping process for the plant-specific supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

- a. Define the proposed action that is to be the subject of the supplement to the GEIS;
- b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;
- c. Identify and eliminate from detailed study those issues that are peripheral or are not significant or that have been covered by prior environmental review;
- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS under consideration;
- e. Identify other environmental review and consultation requirements related to the proposed action;
- f. Indicate the relationship between the timing of the preparation of the environmental analyses and the NRC's tentative planning and decision-making schedule;
- g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and
- h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

- a. The applicant, Energy Harbor Nuclear Corp. (Energy Harbor or the applicant), doing business as Energy Harbor Nuclear Generation LLC.;
- b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian Tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene under 10 CFR 2.309.

IV. Public Scoping Meeting

In accordance with 10 CFR 51.26(b), the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to the proposed action and to determine the scope of issues to be addressed in the EIS.

The NRC is announcing that it will hold an online webinar and teleconference call and an in-person near the facility, including a presentation on the license renewal process and a transcribed public comment session. The virtual meeting will be held October 19, 2023, at 2 p.m. ET. The in-person meeting will be held October 25, 2023, at 6:30 p.m. ET at the Perry Public Library, 3753 Main St., Perry, OH 44081. Details on both meetings can be found on the NRC's Public Meeting Schedule at: <https://www.nrc.gov/pmns/mtg>. A court reporter will transcribe all comments received during each public scoping meeting. To be considered, comments must be provided either at a transcribed public meeting or in writing, as discussed in the **ADDRESSES** section of this notice. Persons interested in attending these meetings should monitor the NRC's Public Meeting Schedule website at <https://www.nrc.gov/pmns/mtg> for additional information, agenda for the meetings, and access additional information. Please contact Mr. Lance Rakovan no later than October 18, 2023, if accommodations or special equipment is needed to attend or to provide comments, so that the NRC staff can determine whether the request can be accommodated.

The public scoping meetings will include: (1) an overview by the NRC staff of the environmental and safety review processes, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on environmental issues or the proposed scope of the Perry license renewal supplement to the GEIS.

Participation in the scoping process for the Perry license renewal

supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Dated: October 4, 2023.

For the Nuclear Regulatory Commission.

Theodore B. Smith,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environment, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–22374 Filed 10–6–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98676; File No. SR–NYSEARCA–2023–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Modify the Options Regulatory Fee

October 3, 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 September 29, 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 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 the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding the Options Regulatory Fee (“ORF”). 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 amend the Fee Schedule to decrease the ORF from \$0.0055 per contract to \$0.0038 per contract, effective on January 1, 2024, and to provide for a temporary waiver of the ORF for the three months leading up to such change, from October 1, 2023 through December 31, 2023 (the “Waiver Period”).⁴

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF “to fund the legal, regulatory, and surveillance operations” of the Exchange.⁵ More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange’s costs for the supervision and regulation of OTP Holders and OTP Firms (collectively, “OTP Holders”), including the Exchange’s regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations and enforcement (collectively, the “ORF Costs”). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of

revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on OTP Holders for options transactions that are cleared by the OTP Holder through the Options Clearing Corporation (“OCC”) in the Customer range regardless of the exchange on which the transaction occurs and is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca.⁶ All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. The Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder’s relationship with its Customers via more labor-intensive exam-based programs.⁷ As a result, the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, OTP Holder proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that market participants must be notified of any

⁶ See Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (“ORF”). The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An OTP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. *See id.*

⁷ The Exchange notes that many of the Exchange’s market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.*, Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (“ORF”). The Exchange proposes to modify the Fee Schedule to provide for a waiver of ORF from October 1, 2023 until December 31, 2023, and to provide that the ORF rate would be \$0.0038 when the Exchange resumes assessing ORF on January 1, 2024.

⁵ The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.03.

change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.⁸

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from OTP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from OTP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds ORF Costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the "Commission").

Reduction of ORF and Temporary ORF Waiver

The Exchange currently assesses an ORF of \$0.0055 per contract. Based on the Exchange's recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to decrease the ORF from the current rate of \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024 and, in concert with the proposed reduction of the ORF, to waive the ORF from October 1, 2023 through December 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange notified OTP Holders of the proposed temporary waiver of the ORF via Trader Update on September 1, 2023 (which was at least 30 calendar days prior to the proposed operative date of the waiver, October 1, 2023)⁹ and will also notify OTP Holders

of the proposed change to the ORF rate via Trader Update at least 30 days prior to the proposed operative date of the new rate, January 1, 2024. The Exchange believes such notices will ensure that market participants have sufficient opportunity to configure their systems to account properly for both the ORF waiver and revised ORF.

The proposed modification of the ORF and accompanying waiver are informed by the Exchange's analysis of recent options volumes. The Exchange proposes to reduce the ORF because it believes that options transaction volume has increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year could exceed a material portion of the Exchange's ORF Costs.¹⁰ The options industry has continued to experience extremely high options trading volumes and volatility, as illustrated in the table below reflecting industry data from OCC for 2021, 2022, and 2023:¹¹

	2021	2022	2023
Customer ADV	34,730,276	34,091,409	35,957,560
Total ADV	74,339,870	76,488,459	81,483,685

For example, although customer average daily volume decreased slightly from 2021 to 2022, both total average daily volume and customer average

daily volume in 2023 increased over the already elevated levels in 2021 and 2022.

The below industry data from OCC demonstrates the high options trading volumes and volatility that the industry has continued to experience in 2023:

	April 2023	May 2023	June 2023	July 2023	August 2023
Customer ADV	32,498,578	34,535,662	37,028,394	35,965,918	35,387,029
Total ADV	73,005,006	78,571,791	83,362,815	80,391,999	81,381,473

The persisting increased options volumes have, in turn, impacted the amount of ORF collected. To determine whether ORF fees should be adjusted, the Exchange reviewed options transaction volume from 2021 through August 2023. Based on the Exchange's review and analysis of historical options transaction volume and predictions regarding future options transaction volume, the Exchange projects that options transaction volume is likely to continue to remain high into 2024.

The Exchange believes that it has sufficient information based on recent options transaction volume to determine how to adjust the ORF for 2024. Taking into consideration both the sustained

increase in options transaction volume, which has persisted into 2023 (and which has translated to increased ORF collection), the Exchange proposes to decrease the ORF from \$0.0055 to \$0.0038 per contract. The Exchange further proposes to make this change effective on January 1, 2024 and to not assess any ORF during the Waiver Period, rather than further adjusting the ORF for the duration of the Waiver Period, as the Exchange believes this proposal would most efficiently accomplish the goals of ensuring that ORF collection does not exceed ORF Costs for 2023 and modifying the ORF rate so that the Exchange may assess an ORF that is designed to recover a

material portion, but not all, of the Exchange's projected ORF Costs when the Exchange resumes assessing ORF on January 1, 2024.

The proposed decrease in ORF is based on the Exchange's estimated projections for its regulatory costs, balanced with the observed increase in options volumes. The Exchange cannot predict whether options volume will remain at the current level going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that amounts collected from assessment of the ORF (as modified) will continue to cover a material portion, but not all, of the

⁸ See Fee Schedule, *supra* note 6.

⁹ See <https://www.nyse.com/trader-update/history#110000672056>.

¹⁰ The Exchange notes that it last modified the ORF rate in February 2014. See Securities Exchange Act Release No. 71409 (January 27, 2014), 79 FR 5499 (January 31, 2014) (SR-NYSEArca-2014-06).

The Exchange also previously filed to waive the ORF from November 1, 2022 through January 31, 2023. See Securities Exchange Act Release No. 96374 (November 22, 2022), 87 FR 73372 (November 29, 2022) (SR-NYSEArca-2022-78).

¹¹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>. The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

Exchange's ORF Costs. In addition, because of the sustained impact of the elevated trading volumes that have persisted into 2023, along with the difficulty of predicting when volumes may return to more normal levels, the Exchange believes that waiving ORF from October 1, 2023 to December 31, 2023 and implementing the reduced ORF rate of \$0.0038 on January 1, 2024 (rather than reducing ORF more drastically in the interim) would lessen the potential for generating excess funds and help ensure that the ORF is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2024, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be further modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying OTP Holders of such change by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹² of the Act, in general, and Section 6(b)(4) and (5)¹³ of the Act, in particular, in that 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 and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed reduction of ORF and accompanying temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2023 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for

the year and going forward. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2023, thereby resulting in substantially higher ORF collections than projected. The Exchange therefore believes that it would be reasonable to decrease the ORF from \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024, and, in connection with that change, to waive ORF from October 1, 2023 through December 31, 2023. The Exchange believes the proposed change is reasonable because it would help the Exchange ensure that ORF collection does not exceed a material portion of the ORF Costs for 2023 and facilitate the efficient implementation of a revised ORF rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange proposes to make the new ORF rate effective on January 1, 2024 and to not assess any ORF during the Waiver Period, rather than further adjusting the ORF for the duration of the Waiver Period, as the Exchange believes this proposal would most efficiently accomplish these objectives. The Exchange believes that not assessing ORF during the Waiver Period and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange also believes that it is reasonable to resume ORF at the decreased rate of \$0.0038 on January 1, 2024. The proposed rate of \$0.0038 per contract is based on the Exchange's estimated projections for its regulatory costs, balanced with the increase in options volumes that has persisted into 2023 and that is likely to continue into 2024; the Exchange thus believes that resumption of the ORF at this rate on January 1, 2024 is reasonable because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange would continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2024 and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be further modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, further adjust the ORF by submitting a proposed rule change and notifying OTP

Holders of such change by Trader Update.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. As noted above, the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca and is assessed on all options transactions that are cleared at the OCC in the Customer range. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, OTP Holder proprietary transactions) of its regulatory program. The Exchange believes that the proposed reduction of ORF from \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024, along with a temporary waiver of the ORF for the three months prior to such change, is an equitable allocation of fees because the new ORF rate would apply equally to all OTP Holders on all their transactions that clear in the Customer range at the OCC, and the Exchange would not assess the ORF on any such transactions during the Waiver Period. The proposed change also would permit the Exchange to efficiently adjust the ORF, which is applicable to all OTP Holders' transactions that clear in the Customer range at the OCC, to an amount designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange also believes

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

that recommencing the ORF at the decreased rate of \$0.0038 per contract effective January 1, 2024, unless the Exchange determines it necessary to further adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would resume applying equally to all OTP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. As noted above, the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca and is assessed on options transactions that are cleared at the OCC in the Customer range. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, OTP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the proposed reduction of ORF and accompanying temporary waiver of the ORF is not unfairly discriminatory because the changes would apply to all OTP Holders subject to the ORF and the Exchange would provide all such OTP Holders with 30 days' advance notice of planned changes to the ORF. The Exchange also believes that recommencing the ORF on January 1,

2024 at \$0.0038, unless the Exchange determines it necessary to further adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would resume applying equally to all OTP Holders based on their transactions that clear in the Customer range at the OCC.

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.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on intramarket competition because the ORF is charged to all OTP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed reduction of the ORF rate and temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. The ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca and is assessed on all options transactions cleared at the OCC in the Customer range. The Exchange also believes recommencing the ORF on January 1, 2024 at \$0.0038 (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs) would not impose an undue burden on competition because the proposed decreased rate would apply equally to all OTP Holders subject to ORF and would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs and the ORF would, as currently, apply to all OTP Holders on their options transactions that clear in the Customer range at the OCC. The Exchange will continue to provide advance notice of changes to the ORF to all OTP Holders via Trader Update to provide OTP Holders with sufficient opportunity to configure their systems to account properly for both the Waiver Period and

resumption of ORF at a new, lower rate on January 1, 2024.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs.

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) ¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-68 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2023-68. 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-2023-68 and should be submitted on or before October 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22347 Filed 10-6-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98680]

Order Cancelling Registrations of Certain Municipal Advisors Pursuant to Section 15B(c)(3) of the Securities Exchange Act of 1934

October 3, 2023.

The municipal advisors whose names appear in the attached Appendix, hereinafter referred to as the "registrants," are registered as municipal advisors pursuant to Sections 15B(a)(1)(B) and 15B(a)(2) of the Securities Exchange Act of 1934 (the "Act").

On August 29, 2023, a Notice of Intention to Cancel Registration of Certain Municipal Advisors, including the registrants, was published in the **Federal Register** (Securities Exchange Act Release No. 34-98208). The notice gave interested persons an opportunity to request a hearing and stated that an order or orders cancelling the registrations would be issued unless a hearing was ordered. No request for a hearing has been filed by any of the registrants, and the Securities and Exchange Commission (the "Commission") has not ordered a hearing.

Pursuant to Section 15B(c)(3) of the Act, the Commission has found that each of the registrants is no longer in existence or has ceased to do business as a municipal advisor.

Accordingly,

It is ordered, pursuant to Section 15B(c)(3) of the Act, that the registration of each registrant be, and hereby is, cancelled.

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.¹

Sherry R. Haywood,

Assistant Secretary.

Appendix:

Registrant name	SEC ID No.
Bethun Nathan S	867-02495
Christen Group, Inc	867-02467
Southern Cross Financial Group LLC ...	867-02544
OCONNOR & Co SECURITIES, INC ...	867-01245
Capital Alaska LLC	867-02604
Fray Municipal Securities	867-02064
Massena Associates LLC	867-02569
SUMMERS, CARROLL, WHISLER LLC	867-01938

[FR Doc. 2023-22349 Filed 10-6-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98678; File No. SR-NYSEAMER-2023-48]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule To Modify the Options Regulatory Fee

October 3, 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 September 29, 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 the NYSE American Options Fee Schedule ("Fee Schedule") regarding the Options Regulatory Fee ("ORF"). The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁷ 17 CFR 200.30-3a(a)(1)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to decrease the ORF from \$0.0055 per contract to \$0.0038 per contract, effective on January 1, 2024, and to provide for a temporary waiver of the ORF for the three months leading up to such change, from October 1, 2023 through December 31, 2023 (the "Waiver Period").⁴

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF "to fund the legal, regulatory, and surveillance operations" of the Exchange.⁵ More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of ATP Holders, including the Exchange's regulatory program and legal expenses associated with options regulation, such as the costs related to in-house staff, third-party service providers, and technology that facilitate regulatory functions such as surveillance, investigation, examinations and enforcement (collectively, the "ORF Costs"). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation ("OCC") in the Customer range regardless of the exchange on which the transaction occurs and is collected from OTP Holder clearing firms by the OCC on behalf of NYSE American.⁶ All options

transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. The Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.⁷ As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, ATP Holder proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that market participants must be notified of any change in the ORF via Trader Update at least 30 calendar days prior to the effective date of the change.⁸

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected

to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds ORF Costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the "Commission").

Reduction of ORF and Temporary ORF Waiver

The Exchange currently assesses an ORF of \$0.0055 per contract. Based on the Exchange's recent review of regulatory costs, ORF collections, and options transaction volume, the Exchange proposes to decrease the ORF from the current rate of \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024 and, in concert with the proposed reduction of the ORF, to waive the ORF from October 1, 2023 through December 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange notified ATP Holders of the proposed temporary waiver of the ORF via Trader Update on September 1, 2023 (which was at least 30 calendar days prior to the proposed operative date of the waiver, October 1, 2023)⁹ and will also notify ATP Holders of the proposed change to the ORF rate via Trader Update at least 30 days prior to the proposed operative date of the new rate, January 1, 2024. The Exchange believes such notices will ensure that market participants have sufficient opportunity to configure their systems to account properly for both the ORF waiver and revised ORF.

The proposed modification of the ORF and accompanying waiver are informed by the Exchange's analysis of recent options volumes. The Exchange proposes to reduce the ORF because it believes that options transaction volume has increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year could exceed a material portion of the Exchange's ORF Costs.¹⁰ The options industry has continued to experience extremely high options trading volumes and volatility, as illustrated in the table below

⁹ See <https://www.nyse.com/trader-update/history#110000672056>.

¹⁰ The Exchange notes that it last modified the ORF rate in February 2014. See Securities Exchange Act Release No. 71410 (January 27, 2014), 79 FR 5506 (January 31, 2014) (SR-NYSEMKT-2014-09). The Exchange also previously filed to waive the ORF from November 1, 2022 through January 31, 2023. See Securities Exchange Act Release No. 96373 (November 22, 2022), 87 FR 73376 (November 29, 2022) (SR-NYSEAMER-2022-52).

⁴ See proposed Fee Schedule, Section VII.A., Options Regulatory Fee ("ORF"). The Exchange proposes to modify the Fee Schedule to provide for a waiver of ORF from October 1, 2023 until December 31, 2023, and to provide that the ORF rate would be \$0.0038 when the Exchange resumes assessing ORF on January 1, 2024.

⁵ The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. See Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR-NYSEAMER-2020-04).

⁶ See Fee Schedule, Section VII.A., Options Regulatory Fee ("ORF"). The Exchange uses reports from OCC when assessing and collecting the ORF.

The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. See *id.*

⁷ The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d-2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. See, *e.g.*, Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

⁸ See Fee Schedule, *supra* note 6.

reflecting industry data from OCC for 2021, 2022, and 2023:¹¹

	2021	2022	2023
Customer ADV	34,730,276	34,091,409	35,957,560
Total ADV	74,339,870	76,488,459	81,483,685

For example, although customer average daily volume decreased slightly from 2021 to 2022, both total average daily volume and customer average

daily volume in 2023 increased over the already elevated levels in 2021 and 2022.

The below industry data from OCC demonstrates the high options trading volumes and volatility that the industry has continued to experience in 2023:

	April 2023	May 2023	June 2023	July 2023	August 2023
Customer ADV	32,498,578	34,535,662	37,028,394	35,965,918	35,387,029
Total ADV	73,005,006	78,571,791	83,362,815	80,391,999	81,381,473

The persisting increased options volumes have, in turn, impacted the amount of ORF collected. To determine whether ORF fees should be adjusted, the Exchange reviewed options transaction volume from 2021 through August 2023. Based on the Exchange's review and analysis of historical options transaction volume and predictions regarding future options transaction volume, the Exchange projects that options transaction volume is likely to continue to remain high into 2024.

The Exchange believes that it has sufficient information based on recent options transaction volume to determine how to adjust the ORF for 2024. Taking into consideration both the sustained increase in options transaction volume, which has persisted into 2023 (and which has translated to increased ORF collection), the Exchange proposes to decrease the ORF from \$0.0055 to \$0.0038 per contract. The Exchange further proposes to make this change effective on January 1, 2024 and to not assess any ORF during the Waiver Period, rather than further adjusting the ORF for the duration of the Waiver Period, as the Exchange believes this proposal would most efficiently accomplish the goals of ensuring that ORF collection does not exceed ORF Costs for 2023 and modifying the ORF rate so that the Exchange may assess an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs when the Exchange resumes assessing ORF on January 1, 2024.

The proposed decrease in ORF is based on the Exchange's estimated projections for its regulatory costs, balanced with the observed increase in

options volumes. The Exchange cannot predict whether options volume will remain at the current level going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that amounts collected from assessment of the ORF (as modified) will continue to cover a material portion, but not all, of the Exchange's ORF Costs. In addition, because of the sustained impact of the elevated trading volumes that have persisted into 2023, along with the difficulty of predicting when volumes may return to more normal levels, the Exchange believes that waiving ORF from October 1, 2023 to December 31, 2023 and implementing the reduced ORF rate of \$0.0038 on January 1, 2024 (rather than reducing ORF more drastically in the interim) would lessen the potential for generating excess funds and help ensure that the ORF is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange will continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2024, and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be further modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹² of the

Act, in general, and Section 6(b)(4) and (5)¹³ of the Act, in particular, in that 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 and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed reduction of ORF and accompanying temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2023 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at current or similar levels going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year and going forward. Particularly, as noted above, the options market has continued to experience elevated volumes and volatility in 2023, thereby resulting in substantially higher ORF collections than projected. The Exchange therefore believes that it would be reasonable to decrease the ORF from \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024, and, in connection with that change, to waive ORF from October 1,

¹¹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data->

Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics. The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and

monthly volume of ETF-based options, in contract sides.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

2023 through December 31, 2023. The Exchange believes the proposed change is reasonable because it would help the Exchange ensure that ORF collection does not exceed a material portion of the ORF Costs for 2023 and facilitate the efficient implementation of a revised ORF rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange proposes to make the new ORF rate effective on January 1, 2024 and to not assess any ORF during the Waiver Period, rather than further adjusting the ORF for the duration of the Waiver Period, as the Exchange believes this proposal would most efficiently accomplish these objectives. The Exchange believes that not assessing ORF during the Waiver Period and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange also believes that it is reasonable to resume ORF at the decreased rate of \$0.0038 on January 1, 2024. The proposed rate of \$0.0038 per contract is based on the Exchange's estimated projections for its regulatory costs, balanced with the increase in options volumes that has persisted into 2023 and that is likely to continue into 2024; the Exchange thus believes that resumption of the ORF at this rate on January 1, 2024 is reasonable because it would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange would continue monitoring ORF Costs in advance of the resumption of the ORF and when it resumes assessing ORF on January 1, 2024 and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be further modified to help ensure that ORF collections would not exceed a material portion of ORF Costs, further adjust the ORF by submitting a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a

portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. As noted above, the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American and is assessed on all options transactions that are cleared at the OCC in the Customer range. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, ATP Holder proprietary transactions) of its regulatory program. The Exchange believes that the proposed reduction of ORF from \$0.0055 per contract to \$0.0038 per contract effective January 1, 2024, along with a temporary waiver of the ORF for the three months prior to such change, is an equitable allocation of fees because the new ORF rate would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC, and the Exchange would not assess the ORF on any such transactions during the Waiver Period. The proposed change also would permit the Exchange to efficiently adjust the ORF, which is applicable to all ATP Holders' transactions that clear in the Customer range at the OCC, to an amount designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange also believes that recommencing the ORF at the decreased rate of \$0.0038 per contract effective January 1, 2024, unless the Exchange determines it necessary to further adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is equitable because the ORF would resume applying equally to all ATP Holders on options transactions in the Customer range, at a rate designed to recover a material portion, but not all, of the Exchange's projected ORF Costs.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. As noted above, the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American and is assessed on options transactions that are cleared at the OCC in the Customer range. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the proposed reduction of ORF and accompanying temporary waiver of the ORF is not unfairly discriminatory because the changes would apply to all ATP Holders subject to the ORF and the Exchange would provide all such ATP Holders with 30 days' advance notice of planned changes to the ORF. The Exchange also believes that recommencing the ORF on January 1, 2024 at \$0.0038, unless the Exchange determines it necessary to further adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would resume applying equally to all ATP Holders based on their transactions that clear in the Customer range at the OCC.

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.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on intramarket competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed reduction of the ORF rate and temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.*, the entering firms. The ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American and is assessed on all options transactions cleared at the OCC in the Customer range. The Exchange also believes recommencing the ORF on January 1, 2024 at \$0.0038 (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed a material portion of ORF Costs) would not impose an undue burden on competition because the proposed decreased rate would apply equally to all ATP Holders subject to ORF and would permit the Exchange to resume assessing an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs and the ORF would, as currently, apply to all ATP Holders on their options transactions that clear in the Customer range at the OCC. The Exchange will continue to provide advance notice of changes to the ORF to all ATP Holders via Trader Update to provide ATP Holders with sufficient opportunity to configure their systems to account properly for both the Waiver Period and resumption of ORF at a new, lower rate on January 1, 2024.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs.

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) ¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁶ 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-2023-48 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-2023-48. 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-2023-48 and should be submitted on or before October 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22348 Filed 10-6-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18143 and #18144; GEORGIA Disaster Number GA-00158]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA-4738-DR), dated 09/07/2023.

Incident: Hurricane Idalia.

Incident Period: 08/30/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 11/06/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

Alan 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: The notice of the President's major disaster declaration for the State of GEORGIA, dated 09/07/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Berrien, Brooks.

Contiguous Counties (Economic Injury Loans Only):

Georgia: Atkinson, Coffee, Irwin, Thomas.

Florida: Jefferson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-22392 Filed 10-6-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0422]

New Canaan Funding Mezzanine V SBIC, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, ("Act") under Section 309 of the Act and the Small Business Administration Rules and Regulations under 13 CFR 107.1900 to function as a small business investment company under the Small Business Investment Company License No. 01/01-0422 issued to New Canaan Funding Mezzanine V SBIC, LP, said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023-22385 Filed 10-6-23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0643]

Hudson Ferry Capital II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, ("Act"), under section 309 of the Act, and 13 CFR 107.1900 of the Code of Federal Regulations, to function as a small business investment company under the Small Business Investment Company License No. 02/02-0643 issued to Hudson Ferry Capital II, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, Small Business Administration.

[FR Doc. 2023-22387 Filed 10-6-23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Matching Program

AGENCY: Office of Capital Access, U.S. Small Business Administration.

ACTION: Notice of a new matching program waiver.

SUMMARY: Pursuant to section 552da(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, and the Payment Integrity Information Act of 2019 (PIIA), notice is hereby given of the conduct of the Computer Matching Program pertaining to the Do Not Pay (DNP) Working System's support of the Small Business Administration's (SBA) programs are the Disaster Home Loan program, Business and Economic Injury Disaster Loan (EIDL) programs, 7(a) Loan programs, and 504 loan programs. This matching program will provide SBA with information that will help it identify potentially improper payments in these SBA Loan Programs.

DATES: Submit comments on or before November 9, 2023. This new matching agreement will be effective upon publication and expires 36 months from the date of publication.

ADDRESSES: Inquiries and comments on this proposed matching program can be addressed to U.S. Small Business Administration, Attn: Sheri McConville, (Acting) Director, Office of Performance and Systems Management, Office of

Capital Access, 409 3rd St. SW, Washington, DC 20416, or by email: Sheri.McConville@sba.gov and Bureau of the Fiscal Service, Information and Security Services, Attn: David J. Ambrose, Chief Security Officer/Chief Privacy Officer, Bureau of the Fiscal Service, 3201 Pennsy Drive, Warehouse "E", Landover, MD 20785, or by email: David.Ambrose@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Kelvin L. Moore, Chief Information Security Officer, Office of the Chief Information Officer, Telephone (202-921-6273), Kelvin.Moore@sba.gov. Informational Privacy related inquiries: LaWanda Burnette, Chief Privacy Officer, Telephone (202-853-0851), LaWanda.Burnette@sba.gov.

David J. Ambrose, Chief Security Officer/Chief Privacy Officer, Bureau of the Fiscal Service, Telephone (202-874-6488), David.Ambrose@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 101-503), amended the Privacy Act (5 U.S.C. 552a) by describing the way computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such individuals. Moreover, PIIA, (31 U.S.C. 3351 *et seq.*), provides the head of the agency operating the Do Not Pay Working System with the authority to waive the requirements in 5 U.S.C. 552a(o), after consultation with OMB, for matching programs conducted under the DNP Initiative (31 U.S.C. 3354). This Notice provides the public with information regarding a matching program pertaining to the DNP Working System's support of SBA Programs that have been granted a waiver, pursuant to PIIA, from the Matching Agreement requirements in the Privacy Act. SBA estimates this Agreement will save SBA and taxpayers millions of dollars per year.

Participating Agencies

U.S. Small Business Administration as the recipient agency, will match against the Bureau of the Fiscal Service, U.S. Department of the Treasury.

Authority for Conducting the Matching Program

In accordance with 31 U.S.C. 3354, executive agencies are required to "review prepayment and pre-award procedures and ensure that a thorough

review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds.” 31 U.S.C. 3354(a)(1).

The Debt Collection Improvement Act of 1996, 31 U.S.C. 3325(d) and 7701(c)(1).

Purpose(s)

The purpose of this program is to assist SBA in the identification of potentially improper payments by allowing SBA access to four restricted databases in DNP's Working System to screen SBA guaranteed and direct loan applications for eligibility, and to conduct analyses to prevent fraud and improper payments.

Categories of Individuals

Individuals/entities applying for or receiving the Disaster Home Loan program; Business and Economic Injury Disaster Loan (EIDL) programs; 7(a) Loan programs; and 504 loan programs.

Categories of Records

SBA is also functioning as the source agency and will furnish information to the DNP Working System regarding SBA Program applicants or benefit recipients. The requests from the SBA may include: The loan applicant's name (which may include their individual name and/or business/trading names, if applicable), Taxpayer Identification Number (TIN), type of TIN, Unique Entity Identifier (UEI), address, date of birth, sex, telephone number(s), email address(es), payment information, associated banking information, and associated payment/transaction information. The Bureau of the Fiscal Service will provide a response record for each individual/entity identified by the source agency. When there is a match between a record provided by the SBA and one or more of the databases contained in the DNP Working System, the DNP Working System will disclose to the source agency the presence of a potentially matching record in the DNP Working System and the database(s) that contain the potentially matching record(s).

System(s) of Records

SBA 20 Disaster Loans Case File, 86 FR 64979 (Nov 19, 2021); SBA 21 Loan Systems, 86 FR 23026 (April 30, 2021); and Treasury/Fiscal Service .017—Do

Not Pay Payment Verification Records, 85 FR 11776 (Feb. 27, 2020).

John A. Miller,
Deputy Associate Administrator for Office of Capital Access, U.S. Small Business Administration.

[FR Doc. 2023–22389 Filed 10–6–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0347]

Escalate Capital Partners SBIC III, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company License No. 06/06–0347 issued to Escalate Capital Partners SBIC III, LP said license is hereby declared null and void.

Bailey DeVries,
Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–22386 Filed 10–6–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Applicant ID No.: 99001222]

Everside SBIC I, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Everside SBIC I, L.P., 1290 Avenue of the Americas, 34th Floor, New York, NY 10104, an applicant to become a Federal Licensee under the Small Business Investment Act of 1958, as amended (“Act”), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and 13 CFR 107.730 of the Code of Federal Regulations, *Financings which Constitute Conflict of Interest*. Everside SBIC I, L.P. is proposing to provide financing to Athenix Holdings LLC (“Company”) to support its growth.

The proposed transaction is brought within the purview of 13 CFR 107.730 because Resolute Capital Partners Fund V–A, L.P., Resolute Capital Partners Fund V–B, L.P. and Resolute Capital Partners Fund IV, L.P. (collectively, “Resolute”), Associates of Everside SBIC I, L.P., as defined in 13 CFR

107.50, hold a 10% or greater equity interest in the Company. By virtue of Resolute's equity ownership of the Company, the Company is also considered an Associate of the Licensee.

Therefore, the proposed transaction requires a regulatory exemption pursuant to 13 CFR 107.730. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,
Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2023–22432 Filed 10–6–23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18110 and #18111; COLORADO Disaster Number CO–00143]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Colorado

AGENCY: Small Business Administration.
ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Colorado (FEMA–4731–DR), dated 08/25/2023.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/08/2023 through 06/23/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 10/24/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2024.

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:

Alan 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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Colorado, dated 08/25/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Baca, Kiowa, Prowers, Teller.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22399 Filed 10–6–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18147 and #18148; GEORGIA Disaster Number GA–00161]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4738–DR), dated 09/09/2023.

Incident: Hurricane Idalia.

Incident Period: 08/30/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 11/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2024.

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:

Alan 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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 09/09/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Burke, Montgomery, Toombs, Treutlen.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22391 Filed 10–6–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18145 and #18146; FLORIDA Disaster Number FL–00193]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4734–DR), dated 09/09/2023.

Incident: Hurricane Idalia.

Incident Period: 08/27/2023 through 09/04/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 11/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2024.

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:

Alan 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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 09/09/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Baker, Charlotte, Duval, Nassau.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22393 Filed 10–6–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18118 and #18119; FLORIDA Disaster Number FL–00192]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Florida (FEMA–4734–DR), dated 08/31/2023.

Incident: Hurricane Idalia.

Incident Period: 08/27/2023 through 09/04/2023.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 10/30/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2024.

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:

Alan 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: The notice of the President's major disaster declaration for the State of Florida, dated 08/31/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Charlotte, Hillsborough.

Contiguous Counties (Economic Injury Loans Only):

Florida: Glades, Hendry, Highlands, Lee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2023–22396 Filed 10–6–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0496]

HCAP Partners V, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that HCAP Partners V, L.P., 4250 Executive Square, Suite 500, La Jolla, CA 92037, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concerns, has sought an exemption under section 312 of the Act and Section 107.730, Financings which Constitute Conflict of Interest of the Small Business Administration (“SBA”) Rules and Regulations (13 CFR 107.730). HCAP Partners V, L.P. (“HCAP V”) is proposing to provide financing to Cubex

LLC (“Company”) to support the Company’s growth.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because HCAP Partners III, L.P. (“HCAP III”), an Associate of HCAP V by virtue of Common Control as defined in § 107.50, holds a 21% of equity interest in the Company. By virtue of HCAP III’s equity ownership, the Company and HCAP V are also Associates. HCAP III expects to receive \$18.6 million from the proposed transaction.

Therefore, the proposed transaction requires a regulatory exemption pursuant to 13 CFR 107.730. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2023–22431 Filed 10–6–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice:12207]

Notice of Determinations; Additional Culturally Significant Object Being Imported for Exhibition— Determinations: “Scripture and Science: Our Universe, Ourselves, and Our Place” Exhibition

SUMMARY: On January 3, 2023, notice was published on page 125 of the **Federal Register** (volume 88, number 1) of determinations pertaining to certain objects to be included in an exhibition entitled “Scripture and Science: Our Universe, Ourselves, and Our Place.” On April 4, 2023, notice was published on page 20015 of the **Federal Register** (volume 88, number 64) of determinations pertaining to certain additional objects to be included in the aforesaid exhibition. Notice is hereby given of the following determinations: I hereby determine that a certain additional object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the aforesaid exhibition at the Museum of the Bible, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display

within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–22357 Filed 10–6–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12211]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: Exhibition of Two Works of Art From the Klesch Collection, London

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary exhibition or display in the Department of European Paintings of The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**. **FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–

632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–22358 Filed 10–6–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12212]

Notice of Determinations; Culturally Significant Objects Being Re-imported for Exhibition—Determinations: “Wolfgang Tillmans: To Look Without Fear” Exhibition

SUMMARY: On June 3, 2022, notice was published on page 33866 of the **Federal Register** (volume 87, number 107) of determinations pertaining to certain objects to be included in an exhibition entitled “Wolfgang Tillmans: To look without fear” at The Museum of Modern Art in New York. Notice is hereby given of the following determinations: I hereby determine that the same objects, which are being re-imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforementioned exhibition at the San Francisco Museum of Modern Art, San Francisco, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator,
Office of the Legal Adviser, U.S.
Department of State (telephone: 202–
632–6471; email:

section2459@state.gov). The mailing
address is U.S. Department of State, L/
PD, 2200 C Street NW (SA–5), Suite
5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The
foregoing determinations were made
pursuant to the authority vested in me
by the Act of October 19, 1965 (79 Stat.
985; 22 U.S.C. 2459), Executive Order
12047 of March 27, 1978, the Foreign
Affairs Reform and Restructuring Act of
1998 (112 Stat. 2681, *et seq.*; 22 U.S.C.
6501 note, *et seq.*), Delegation of
Authority No. 234 of October 1, 1999,
Delegation of Authority No. 236–3 of
August 28, 2000, and Delegation of
Authority No. 523 of December 22,
2021.

Nicole L. Elkon,

*Deputy Assistant Secretary for Professional
and Cultural Exchanges, Bureau of
Educational and Cultural Affairs, Department
of State.*

[FR Doc. 2023–22359 Filed 10–6–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice:12208]

**Notice of Determinations; Culturally
Significant Objects Being Imported for
Exhibition—Determinations: “Beyond
the Great Wave: Works by Hokusai
From the British Museum” Exhibition**

SUMMARY: Notice is hereby given of the
following determinations: I hereby
determine that certain objects being
imported from abroad pursuant to an
agreement with their foreign owner or
custodian for temporary display in the
exhibition “Beyond the Great Wave:
Works by Hokusai from the British
Museum” at the Bowers Museum, Santa
Ana, California, and at possible
additional exhibitions or venues yet to
be determined, are of cultural
significance, and, further, that their
temporary exhibition or display within
the United States as aforementioned is
in the national interest. I have ordered
that Public Notice of these
determinations be published in the
Federal Register.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator,
Office of the Legal Adviser, U.S.
Department of State (telephone: 202–
632–6471; email: *section2459@*
state.gov). The mailing address is U.S.
Department of State, L/PD, 2200 C Street

NW (SA–5), Suite 5H03, Washington,
DC 20522–0505.

SUPPLEMENTARY INFORMATION: The
foregoing determinations were made
pursuant to the authority vested in me
by the Act of October 19, 1965 (79 Stat.
985; 22 U.S.C. 2459), Executive Order
12047 of March 27, 1978, the Foreign
Affairs Reform and Restructuring Act of
1998 (112 Stat. 2681, *et seq.*; 22 U.S.C.
6501 note, *et seq.*), Delegation of
Authority No. 234 of October 1, 1999,
Delegation of Authority No. 236–3 of
August 28, 2000, and Delegation of
Authority No. 523 of December 22,
2021.

Nicole L. Elkon,

*Deputy Assistant Secretary for Professional
and Cultural Exchanges, Bureau of
Educational and Cultural Affairs, Department
of State.*

[FR Doc. 2023–22360 Filed 10–6–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

**Notice of Intent To Rule on Proposed
Land Use Changes to Surplus Property
at the Jacksonville Executive at Craig
Airport, Jacksonville, FL**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Notice is being given that the
FAA is considering a request from the
Jacksonville Aviation Authority (JAA) to
change 79.23 acres of airport property
from aeronautical use to non-
aeronautical use for commercial
development at Jacksonville Executive
at Craig Airport in Jacksonville, Florida.
The surplus property land is no longer
required for aviation use. The land has
been designated for non-aeronautical use
on the Airport Layout Plan. JAA will
enter into a land lease agreement with
a commercial developer, which will
generate non-aeronautical revenue to be
used for the operation and maintenance
of the airport.

DATES: Comments are due on or before
November 9, 2023.

ADDRESSES: Documents are available for
review at the FAA Orlando Airports
District Office, 8427 SouthPark Circle,
Suite 524, Orlando, FL 32819. Written
comments on the Sponsor’s request
must be delivered or mailed to: Ryan
Allen, Community Planner, Orlando
Airports District Office, 8427 SouthPark
Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT:

Ryan Allen, Community Planner,

Orlando Airports District Office, 8427
SouthPark Circle, Suite 524, Orlando,
FL 32819, or by telephone at (407) 487–
7086.

SUPPLEMENTARY INFORMATION: Section
125 of The Wendell H. Ford Aviation
Investment and Reform Act for the 21st
Century (AIR–21) requires the FAA to
provide an opportunity for public notice
and comment prior to the “waiver” or
“modification” of a Sponsor’s Federal
obligation to use certain airport land for
non-aeronautical purposes.

Bartholomew Vernace,

*Manager, Orlando Airports District Office,
Southern Region.*

[FR Doc. 2023–22365 Filed 10–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration**

**Notice of Final Federal Agency Action
on Proposed Interchange in Georgia,
Interstate 20 (I–20) at County Road
(CR) 249/Old Mill Road, Morgan and
Walton Counties, Georgia**

AGENCY: Federal Highway
Administration (FHWA), Department of
Transportation (DOT).

ACTION: Notice of limitations on claims
for judicial review of action by FHWA
and other Federal agencies.

SUMMARY: This notice announces actions
taken by FHWA and other Federal
agencies that are final. This final agency
action relates to a proposed new
interchange project, the I–20 at Old Mill
Road Interchange Project, along I–20 at
Old Mill Road beginning approximately
0.38 mile south of I–20 on Old Mill
Road and ending approximately 0.27
mile north of I–20 at a signalized
intersection with a newly constructed
frontage road. The length of the
proposed project is approximately 0.73
mile. The I–20 at Old Mill Road
Interchange Construction Project is
located in Morgan and Walton Counties,
Georgia. The FHWA’s Finding of No
Significant Impact (FONSI) provides
details on the Selected Alternative for
the proposed interchange. Those actions
grant licenses, permits, and approvals
for the project.

DATES: By this notice, FHWA is advising
the public of the final agency actions
subject to 23 U.S.C. 139(l)(1). A claim
seeking judicial review of the Federal
agency actions on the highway project
will be barred unless the claim is filed
on or before March 8, 2024. If the
Federal law that authorizes judicial
review of a claim provides a time period
of less than 150 days for filing such

claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Sabrina David, Division Administrator, Georgia Division, Federal Highway Administration, 75 Ted Turner Drive, Suite 1000, Atlanta, Georgia 30303; telephone 404-562-3630; email: Sabrina.David@dot.gov. FHWA's normal business hours are 8 a.m. to 5 p.m. (eastern time) Monday through Friday. For Georgia Department of Transportation (GDOT): Mr. Russell McMurray, Commissioner, Georgia Department of Transportation, 600 West Peachtree Street, 22nd Floor, Atlanta, Georgia 30308; telephone (404) 631-1990; email: RMcMurray@dot.ga.gov. GDOT's normal business hours are 8 a.m. to 5 p.m. (eastern time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken a final agency action on GDOT Project PI 0018361 by issuing a FONSI for the following new interchange project in the State of Georgia: The I-20 at Old Mill Road Interchange Construction Project located in Morgan and Walton Counties, Georgia. The Selected Alternative will construct a new interchange along I-20 at Old Mill Road. Old Mill Road in the vicinity of the new interchange will be widened from a two-lane section to a four-lane section with a 20-foot grassed median with bike lanes (north of I-20) and sidewalks and realigned to the west of its current location. The project will begin approximately 0.38 mile south of I-20 on Old Mill Road, construct a new bridge over I-20 to the west of the existing bridge, and terminate approximately 0.27 mile north of I-20 at a signalized intersection with a newly constructed frontage road. The length of the proposed construction is approximately 0.73 mile. The purpose of the project is listed below:

- Provide new, direct vehicular access to I-20, which will serve current and projected future vehicular and truck traffic;
- Provide congestion relief for the existing I-20/US 278 interchange to the west, which is not anticipated to have sufficient capacity to accommodate projected traffic volumes by 2045;
- Accelerate project delivery.

The FHWA's action, related actions by other Federal Agencies, and the laws under which such actions were taken are described in the Environmental Assessment (EA) for the project, approved on March 8, 2023, the FONSI issued on October 3, 2023, and other documents in the project file. The EA, FONSI and other project records are available by contacting FHWA or GDOT

at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The EA and FONSI can also be reviewed and downloaded from the project website at <https://us278andoldmillroad-gdot.hub.arcgis.com/>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q)].
3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901-4918]; 23 CFR part 772.
4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667d]; Migratory Bird Treaty Act [16 U.S.C. 703-712].
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
8. *Wetlands and Water Resources:* Coastal Zone Management Act [16 U.S.C. 1451-1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Flood Disaster Protection Act [42 U.S.C. 4001-4128].
9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601-9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901-6992(k)].
10. *Executive Orders:* E.O. 14096 Revitalizing Our Nation's Commitment to Environmental Justice for All; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and

Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13045 Protection of Children From Environmental Health Risks and Safety Risks; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 3, 2023.

Sabrina S. David,

Division Administrator, Atlanta, Georgia.

[FR Doc. 2023-22354 Filed 10-6-23; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2024 Competitive Funding Opportunity: Competitive Grants for Rail Vehicle Replacement Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for \$196,906,663 in competitive grants under the fiscal year (FY) 2024 Competitive Grants for Rail Vehicle Replacement Program (Rail Vehicle Replacement Program). As required by Federal public transportation law, Rail Vehicle Replacement Program funds will be allocated competitively to assist in the funding of capital projects to replace rail rolling stock. FTA may allocate additional funding made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the [GRANTS.GOV](https://www.grants.gov) "APPLY" function by 11:59 p.m. Eastern time, Monday, December 18, 2023. Prospective applicants should initiate the process by promptly registering on the [GRANTS.GOV](https://www.grants.gov) website to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at <https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding> and in

the “FIND” module of *GRANTS.GOV*. The funding opportunity ID is FTA–2024–002–TPM–RAIL. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT:

Donna Iken, Competitive Grants for Rail Vehicle Replacement Program Manager, FTA Office of Program Management, 202–366–0876, or donna.iken@dot.gov.

Table of Contents

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- G. Federal Awarding Agency Contacts
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A. Program Description

Federal public transportation law (49 U.S.C. 5337(f)) authorizes FTA to award grants for the replacement of rail rolling stock through a competitive process, as described in this notice. The Rail Vehicle Replacement Program provides funding to State and local governmental authorities. The Federal Assistance Listing for the program is 20.525.

Passenger rail service provides critical and cost-effective transportation links throughout the United States and faces a critical backlog of state of good repair and safety investments. FTA seeks to fund projects to all populations in a project area that create proportional impacts, remove transportation related disparities, and increase equitable access to project benefits, consistent with *Executive Order 13985*, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009).

B. Federal Award Information

Federal public transportation law (49 U.S.C. 5338(a)(2)(L)) authorizes \$300,000,000 in contract authority funds for FY 2024 for competitive grants under the Rail Vehicle Replacement Program. A portion of this FY 2024 funding was committed in the FY 2022 and FY 2023 Competitive Grants for Rail Vehicle Replacement Program Project Selections, thus the remaining funding available for FY 2024 totals \$196,906,663. FTA may also commit up to \$600,000,000 in FY 2025 and FY 2026 funding towards projects selected in FY 2024.

For the FY 2023 NOFO, FTA received 18 eligible proposals from 13 states requesting over \$3.5 billion in Federal funds. FTA selected six projects in six states, allocating \$703,093,337.

FTA will grant pre-award authority to incur costs for selected projects beginning on the date this FY 2024

NOFO is published in the **Federal Register**. Applicants that utilize pre-award authority to incur eligible expenses prior to project selection announcement will be responsible for any costs incurred if the application is not selected. Funds are available for obligation for three years after the fiscal year in which the awards are announced. For multi-year grant agreements, subsequent obligations must be made in the following year for a two-year agreement, and each of the two consecutive fiscal years for a three-year agreement, following the fiscal year from which the first obligation is made. Per Federal public transportation law (49 U.S.C. 5337(f)(3)), FTA intends to fund up to three new awards each fiscal year.

FTA may select projects to receive multi-year grant agreements. If a project is selected to receive a multi-year grant agreement, that agreement will establish the maximum amount of Federal financial assistance for the project that may be provided in not more than three consecutive fiscal years. A multi-year grant agreement will obligate an amount of available budget authority and include a contingent commitment to obligate an additional amount from future available budget authority. The contingent commitment under a multi-year agreement is not an obligation of the Federal Government.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for the Competitive Grants for Rail Vehicle Replacement Program are States and local governmental authorities.

2. Cost Sharing or Matching

Per 49 U.S.C. 5337(f)(5), the Competitive Grants for Rail Vehicle Replacement funding may be up to 50 percent of the total eligible project cost. Other Federal funding, including FTA funding, such as State of Good Repair Program formula funding, may be applied for the project up to a maximum 80 percent Federal share of eligible project costs, per 49 U.S.C. 5337(f)(6). For example, a rail vehicle replacement project with a total eligible cost of \$100,000,000 may receive up to \$50,000,000 from this program. The remaining \$50,000,000 could be provided from a combination of non-Federal and other Federal funds, up to \$30,000,000 of which could be other Federal funding. For a \$100,000,000 project, at least \$20,000,000 (20 percent) must be non-Federal funds.

Eligible sources of non-Federal matching funds include:

i. Cash from non-governmental sources other than revenues from providing transit services (such as fare revenues);

ii. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession.

iii. Monies received under a service agreement with a State or local social service agency or private social service organization;

iv. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

v. In-kind contributions integral to the project. Revenue bond proceeds for a capital project, with prior FTA approval; and

vi. Transportation Development Credits (formerly referred to as Toll Revenue Credits).

3. Eligible Projects

The focus of the grant program is to modernize America's transit system, focusing on maintaining a State of Good Repair for fixed-guideway rail transit. Under the Competitive Grants for Rail Vehicle Replacement Program (49 U.S.C. 5337(f)), eligible projects are the replacement of rail rolling stock. For the purposes of this program, rail rolling stock is defined as revenue service, passenger carrying vehicles, or propulsion (locomotives) vehicles necessary for the provision of rail public transportation. Replacement is defined as the number of vehicles required to replace the number of vehicles to be removed from service that are substantially the same type. If changing vehicle type (e.g., a commuter rail switching from single level to double-decker cars), the eligible project is the number of cars necessary to carry an equivalent number of passengers as the substantially same type of replacement would. These rail vehicles can include, but are not limited to, commuter rail, heavy rail, and light rail vehicles. Up to 0.5 percent of the Federal request may be used to pay for project-related workforce development activities, as long as the Federal share under this program of those workforce development activities is not more than 80 percent. Up to 0.5 percent of the Federal request may be used to pay for project related training from the National Transit Institute (NTI), as long as the Federal share under this program for the related training from NTI is not more than 80 percent. Applicants must identify the proposed use of funds for these activities in the project proposal and identify them separately in the project budget. Vehicles that do not

operate on rails, including rubber tire support vehicles, as well as maintenance and other non-revenue vehicles that do operate on rails, are not eligible under this program. Fleet expansion projects are also not eligible under this program. If a procurement includes both expansion and replacement vehicles, only the cost of the replacement vehicles may be included in the total eligible project cost under this program.

As required by Federal public transportation law (49 U.S.C. 5337(f)(4)), FTA will consider the size of the rail system of the applicant, the amount of funds available to the applicant from this program, the age and condition of the rail rolling stock of the applicant that has exceeded or will exceed the useful service life in the five-year period following a grant award, and whether the applicant has identified replacement of the rail vehicles as a priority in the investment prioritization portion of the transit asset management plan of the recipient pursuant to part 625 of title 49 of the Code of Federal Regulations. Evaluation criteria are described in detail in Section E of this notice.

D. Application and Submission Information

1. Address To Request Application Package

Applications may be accessed, and must be submitted, electronically through *GRANTS.GOV*. General information for accessing and submitting applications through *GRANTS.GOV* can be found at <https://www.fta.dot.gov/howtoapply> along with specific instructions for the forms and attachments required for submission. A complete proposal submission for the program consists of two forms: the SF-424 Application for Federal Assistance (available at *GRANTS.GOV*) and the supplemental form for the FY 2024 Rail Vehicle Replacement Program (downloaded from *GRANTS.GOV* or the FTA website at: <https://www.transit.dot.gov/grant-programs/rail-vehicle-replacement-grants>). Mail or fax submissions will not be accepted.

2. Content and Form of Application Submission

(i) Proposal Submission

A complete proposal submission consists of two forms: (1) the SF-424 Application for Federal Assistance; and (2) the supplemental form for the FY 2024 Rail Vehicle Replacement Program. The supplemental form and any supporting documents must be attached to the "Attachments" section of the SF-424. The application must

include responses to all sections of the SF-424 Application for Federal Assistance and the supplemental form, unless designated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice. Failure to submit the information as requested can delay review or disqualify the application.

FTA will accept only one supplemental form per SF-424 submission. FTA encourages applicants to consider submitting a single supplemental form that includes multiple activities as one project to be evaluated as a consolidated proposal. If an applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF-424 and supplemental form.

Applicants may attach additional supporting information to the SF-424 submission, including but not limited to documentation supporting the applicant's eligibility for the grant programs, letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Supporting documentation should be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, and description of areas served may be requested in varying degrees of detail on both the SF-424 and supplemental form. Applicants must fill in all fields unless otherwise stated on the forms. Applicants should not place N/A or "refer to attachment" in lieu of typing in responses in the field sections. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the "Check Package for Errors" and the "Validate Form" validation buttons on both forms to check all required fields on the forms, and to ensure that the Federal and local amounts specified are consistent.

Applicants should enter their information in the supplemental form (fillable PDF) that is made available on FTA's website or through the *GRANTS.GOV* application package and should attach this to the application in its original format. Applicants should not use scanned versions of the form, "print" the form to PDF, convert or

create a version using another text editor, etc.

(ii) Application Content

The SF-424 Application for Federal Assistance and the supplemental form will prompt applicants for the required information:

- a. Applicant name
- b. Unique entity identifier (generated by *SAM.GOV*)
- c. Key contact information (including contact name, address, email address, and phone)
- d. Congressional district(s) in which project is located
- e. Project information (including title, executive summary, and type)
- f. A detailed description of the need for the project
- g. A detailed description of how the project will support the program objectives
- h. Evidence that the project is consistent with local and regional planning objectives
- i. Evidence that the applicant can provide the non-Federal cost share
- j. A description of the technical, legal, and financial capacity of the applicant
- k. A detailed project budget
- l. An explanation of the scalability of the project
- m. Details on the non-Federal matching funds
- n. A detailed project timeline, including the date the rail vehicle procurement Notice to Proceed (NTP) has been or is intended to be issued to the manufacturer if proposing to utilize an existing contract—Note, the NTP date must be after the date of the publication of this NOFO for the project to be eligible.
- o. The applicant's Transit Asset Management Plan (or, if lengthy, applicable sections sufficient to determine the project is consistent with the plan)
- p. Information related to priority considerations in Subsection E.2.

Applicants should reference the criteria described in Section E of this NOFO for further description of the content applicants should address in their applications.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in *SAM.GOV* before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active *SAM* registration with current information at all times during which the applicant has an active Federal award or an application

under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d).

All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if there is a need to obtain an Employer Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit <https://www.sam.gov>.

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Time on Monday, December 18, 2023. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the deadline to allow time to correct any problems that may have caused either *GRANTS.GOV* or FTA systems to reject the submission. Proposals submitted after the deadline will be considered only if lateness was due to extraordinary circumstances not under the applicant's control. Deadlines will not be extended due to scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission to *GRANTS.GOV*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in SAM is renewed annually; and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds made available under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to the publication of this NOFO in the **Federal Register**, which is when Pre-Award authority begins (see Section F.2.a). Allowable direct and indirect expenses must be consistent with the Government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant advises that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount whether or not a scalable option is provided. FTA may award funds using a multi-year grant agreement of up to three years, as described in Section B of this notice.

E. Application Review Information

1. Criteria

Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate project proposals

based on the criteria described in this notice.

a. Demonstration of Need

As the purpose of this program is to fund rail rolling stock and maintain public transportation systems in a state of good repair, applications will be evaluated based on the quality and extent to which they demonstrate how the proposed project will address an unmet need for capital investment in rail vehicles.

Applicants must provide information on the age, condition, and performance of the rail vehicles to be replaced. The law requires FTA to consider the age and condition of the rail rolling stock of the applicant that has exceeded or will exceed the useful service life of the rail rolling stock in the 5-year period following the grant. FTA will define that five years as starting one year after the date applications are due. FTA will provide higher priority for rolling stock already past its useful life. The proposal must address how the project conforms to the applicant's spare ratio guidelines and provide the rationale.

b. Demonstration of Benefits

FTA will evaluate the potential for projects to improve the condition of the transit system by replacing rail vehicles that are in poor condition or have surpassed their minimum or intended useful life benchmarks. Additionally, applicants should specifically identify and address in their application one or more of the following:

Safety: FTA will evaluate the potential for projects to improve the safety of the transit system. Applicants may describe the benefits of increased safety of replacement vehicles and how that may impact the broader safety of their transportation system.

Performance: FTA will evaluate the benefits of reducing breakdowns and service interruptions, increasing service performance and reliability, and reducing the cost of maintaining outdated vehicles.

Enhanced Access and Mobility for People with Disabilities: FTA will evaluate the potential for projects to improve access and mobility for persons with disabilities.

Combating Climate Change: FTA will evaluate the benefits of any otherwise eligible project that is proposing to replace a locomotive or self-propelled passenger cars with a locomotive or self-propelled passenger cars that produces fewer harmful emissions at the point of service.

c. Planning and Local/Regional Prioritization

Applicants must demonstrate how the proposed project is consistent with local and regional planning documents and identified priorities. This will involve assessing whether the project is consistent with the transit priorities identified in the long-range transportation plan and the State and Metropolitan Transportation Improvement Program (STIP/TIP). Applicants should note if the project could not be included in the financially constrained STIP or TIP due to lack of funding, and if selected that the project can be added to the federally approved STIP before grant award.

FTA will evaluate applications based on the quality and extent to which they assess whether the project is consistent with the investment priorities identified in the applicant's Transit Asset Management (TAM) Plan, pursuant to 49 CFR part 625. Applicants should also describe how replacing the vehicle will help them meet the state of good repair performance targets set in their Transit Asset Management (TAM) Plan.

FTA encourages applicants to demonstrate State or local support by including letters of support from State departments of transportation, local transit agencies, local government officials and public agencies, local non-profit or private sector organizations, and other relevant stakeholders. Applications that include letters of support will be viewed more favorably than those that do not. For FTA to fully consider a letter of support, the letter must be included in the application package. In an area with both rail and other public transit operators, FTA will evaluate whether project proposals demonstrate coordination with and support of other related projects within the applicant's Metropolitan Planning Organization (MPO) or the geographic region within which the proposed project will operate.

d. Local Financial Commitment

Applicants must identify the sources of funding for the total eligible vehicle replacement project cost, including other Federal funding if applicable, and the non-Federal cost share, and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the non-Federal cost share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which non-Federal funds have already been made available or

reserved. Applicants should submit evidence of the availability of funds for the project, by including, for example, a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of other non-Federal funds.

An applicant may provide documentation of previous and recent local investments in the project, which cannot be used to satisfy non-Federal matching requirements, as evidence of local financial commitment.

e. Project Implementation Strategy

Projects will be evaluated based on the extent to which the project is ready to implement within a reasonable period of time and whether the applicant's proposed implementation plans are reasonable and complete. Applicants should discuss and include any supporting information demonstrating that the proposed project is compatible with the existing system and takes into account any adjustments that need to be made to complete successful implementation.

In assessing whether the project is ready to implement within a reasonable period of time, FTA will consider whether the project qualifies for a Categorical Exclusion, or whether the required environmental work has been initiated or completed for projects that require an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969. As such, applicants should submit information describing the project's anticipated path and timeline through the environmental review process. If the project will qualify as a Categorical Exclusion, the applicant must say so explicitly in the application. The proposal must also state whether grant funds can be obligated within 12 months from time of award, if selected, and if necessary, the timeframe under which the Metropolitan TIP and STIP can be amended to include the proposed project. Additional consideration will be given to projects for which grant funds can be obligated within 12 months from time of award. The applicant must also include the date the rail vehicle procurement Notice to Proceed has been or is intended to be issued to the manufacturer if proposing to utilize an existing contract.

In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project implementation plan, including all necessary project milestones and the overall project

timeline. For projects that will require formal coordination, approvals, or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

f. Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal, and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project. Additional information on the compliance requirements for these grants appears later in this notice.

Applicants with outstanding legal, technical, or financial compliance issues from an FTA compliance review or FTA grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the project.

2. Review and Selection Process

FTA technical evaluation committees will evaluate proposals using the project evaluation criteria. FTA staff may request additional information from applicants, if necessary. After consideration of the findings of the technical evaluation committees, the FTA Administrator will determine the final selection of projects for program funding. In determining the allocation of program funds, FTA may consider geographic diversity, the age and condition of the vehicles to be replaced, diversity in the size of the transit systems receiving funding, and the availability to the applicant of State of Good Repair Formula funding or other competitive awards. FTA may consider capping the amount a single applicant may receive.

3. Integrity and Performance Review

Prior to making an award with a total amount of Federal share greater than the simplified acquisition threshold (currently \$250,000), FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the

applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

Final project selections will be posted on the FTA website. Only proposals from eligible recipients for eligible activities will be considered for funding. There is no minimum or maximum grant award amount; however, FTA intends to fund up to three meritorious projects per year of funding. FTA may also award multi-year grant agreements of up to three years. Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

2. Administrative and National Policy Requirements

a. Pre-Award Authority

Pre-award authority for the selected projects is available beginning on the date that this Rail Vehicle Replacement Program NOFO is published in the **Federal Register**. There is no blanket pre-award authority for these projects before publication of this NOFO. For more information about FTA's policy on pre-award authority, please see FTA's 2023 Apportionment Notice (88 FR 23117).

b. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). All recipients are subject to the grant requirements of the State of Good Repair program (49 U.S.C. 5337), FTA's Master Agreement for financial assistance awards, the annual Certifications and Assurances required of applicants, and FTA Circular "State of Good Repair Grant Program" (FTA.C.5300.1E). All recipients must also follow the Award Management Requirements (FTA.C.5010.1) and the labor protections required by Federal public transportation law (49 U.S.C. 5333(b)). All of these documents are available on FTA's website. Technical assistance regarding these requirements is available from each FTA regional office.

c. Made in America

A project funded under this NOFO must comply with FTA's Buy America (49 U.S.C. 5323(j)) and the Build

America, Buy America Act's domestic preference requirements for infrastructure projects (§§ 70901–70953 of the Infrastructure Investment and Jobs Act, Pub. L. 117–58), which together require that all iron, steel, manufactured goods, and construction materials used in the project be produced in the United States and set minimum domestic content and final assembly requirements for rolling stock.

Any proposal that will require a waiver of any domestic preference standard must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

d. Civil Rights Requirements

Applications should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. This should include a current Title VI program plan and a completed Community Participation Plan (alternatively called a Public Participation Plan), if applicable. Applicants who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds.

Recipients of Federal transportation funding will be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. The Department's and FTA's Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

e. Disadvantaged Business Enterprise

Projects for railcar acquisitions are subject to the transit vehicle manufacturer (TVM) rule of the USDOT's Disadvantaged Business Enterprise (DBE) program regulation (49 CFR 26.49). The TVM rule requires recipients procuring transit vehicles to limit eligible bidders to certified TVMs. To become a certified TVM, a manufacturer of transit vehicles must submit a DBE program plan and annual goal to FTA for approval. A list of certified TVMs is posted on FTA's web page at <https://www.transit.dot.gov/TVM>. Recipients should contact FTA before accepting bids from entities not listed on this web page.

In lieu of restricting eligibility to certified TVMs, a recipient may, with FTA's approval, establish project-specific goals for DBE participation in the procurement of transit vehicles.

Planning

FTA encourages applicants to notify the appropriate State Departments of Transportation and MPOs in areas likely to be served by the project funds made available under these initiatives and programs. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding. As described under the evaluation criteria, FTA may consider whether a project is consistent with or already included in these plans when evaluating a project.

f. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

g. Performance and Program Evaluation

As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to

relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and subrecipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), (Pub. L. 115–435) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means “an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.” 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6, Section 290).

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports. Applicant should include goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Recipients or beneficiaries of funds made available through this NOFO are also required to regularly submit data to the National Transit Database. National Transit Database reports include total sources of revenue and complete expenditure reports for all public transportation operations, not just those funded by this project.

FTA is committed to making evidence-based decisions guided by the best available science and data. In accordance with the Evidence Act, FTA may use information submitted in discretionary funding applications; information in FTA's Transit Award Management System (TrAMS), including grant applications, Milestone Progress Reports (MPRs), Federal Financial Reports (FFRs); transit service, ridership and operational data submitted in FTA's National Transit Database; documentation and results of FTA oversight reviews, including triennial and state management reviews; and other publicly available sources of data to build evidence to support policy,

budget, operational, regulatory, and management processes and decisions affecting FTA's grant programs.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Competitive Grants for Rail Vehicle Replacement Program manager, Donna Iken, by phone at 202–366–8076, or by email at Donna.Iken@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. To ensure receipt of accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties. Contact information for FTA's regional offices can be found on FTA's website at <https://www.transit.dot.gov/about/regional-offices/regional-offices/about/regional-offices/regional-offices>. For issues with GRANTS.GOV, please contact GRANTS.GOV by phone at 1–800–518–4726 or by email at support@grants.gov.

H. Other Information

This program is not subject to Executive Order 12372, “Intergovernmental Review of Federal Programs.” FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C.

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If an applicant submits information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant

must do the following: (1) state on the cover of that document that it “Contains Confidential Business Information (CBI);” (2) mark each page that contains confidential information with “CBI;” (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. FTA will protect confidential information complying with these requirements to the extent required under applicable law. If FTA receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, FTA will follow the procedures described in DOT's FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential will be exempt from disclosure under FOIA.

Nuria I. Fernandez,
Administrator.

[FR Doc. 2023–22419 Filed 10–6–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of 11 individuals that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with these individuals.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions

programs are available on OFAC's website (<https://ofac.treasury.gov/>).

Notice of OFAC Action

On September 7, 2023, OFAC determined that the property and

interests in property subject to U.S. jurisdiction of the following individuals are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810-AL-P

Individual

1. CHERNOV, Mikhail Vadimovich (Cyrillic: ЧЕРНОВ, Михаил Вадимович) (a.k.a. "BULLET"), Russia; DOB 26 Jan 1986; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

2. GALOCHKIN, Maksim (a.k.a. "BENTLEY"; a.k.a. "CRYPT"; a.k.a. "VOLHVB"), Abakan, Russia; DOB 19 May 1982; nationality Russia; Email Address volhvb@mail.ru; alt. Email Address volhvb@live.ru; alt. Email Address volhvb@yandex.ru; alt. Email Address volhvb@gmail.com; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

3. KHALIULLIN, Maksim Marselevich (Cyrillic: ХАЛИУЛЛИН, Максим Марселевич) (a.k.a. "KAGAS"), Chelyabinsk, Russia; DOB 28 Feb 1993; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support

for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

4. KUROV, Artem (Cyrillic: КУРОВ, Артем) (a.k.a. “NANED”), Kaluga, Obninsk, Russia; DOB 30 Mar 1993; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201; Passport 2912565616 (Russia) (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

5. LOGUNTSOV, Sergey, Saint Petersburg, Russia; DOB 15 Jul 1983; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

6. MOZHAEV, Alexander Vyacheslavovich (Cyrillic: МОЖАЕВ, Александр Вячеславович) (a.k.a. “GREEN”; a.k.a. “ROCCO”), Russia; DOB 02 Oct 1978; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

7. PUTILIN, Dmitry Sergeyevich (Cyrillic: ПУТИЛИН, Дмитрий Сергеевич) (a.k.a. “GRAD”; a.k.a. “STAFF”), Chelyabinsk 454119, Russia; DOB 24 Apr 1993; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

8. RUDENSKIY, Maksim, Saint Petersburg, Russia; DOB 01 Nov 1977; nationality Russia; Email Address rfonin@gmail.com; alt. Email Address mfonin@jabber.ru; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

9. TSAREV, Mikhail Mikhailovich (a.k.a. “GRACHEV, Alexander”; a.k.a. “IVANOV MIXAIL”; a.k.a. “MANGO”; a.k.a. “MISHA KRUTYSHA”; a.k.a. “SUPER MISHA”; a.k.a. “TSAREV, Nikita Andreevich”), Serpukhov, Russia; DOB 20 Apr 1989; nationality Russia; Email Address tsarev89@gmail.com; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

10. VALIAKHMETOV, Vadym Firdavysovich (Cyrillic: ВАЛИАХМЕТОВ, Вадим Фирдависович) (a.k.a. VALIAKHMETOV, Vadim; a.k.a. “MENTOS”; a.k.a. “VASM”; a.k.a. “WELDON”), Russia; DOB 07 May 1981; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

11. ZHUYKOV, Andrey (a.k.a. “DEFENDER”; a.k.a. “DIF”), Sochi, Russia; Yekaterinburg, Russia; DOB 18 Feb 1982; nationality Russia; Email Address megaprof@gmail.com; alt. Email Address refflex@gmail.com; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 (individual) [CYBER2].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

Dated: October 2, 2023.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-22378 Filed 10-6-23; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names

of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for

Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Compliance, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://ofac.treasury.gov>).

Notice of OFAC Actions

On October 3, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below:

BILLING CODE 4810-AL-P

Individuals:

1. WANG, Jiantong (Chinese Simplified: 王建通), No. 199 Fengjiazhai Village, Fengjiazhai Township, Guangzong County, Xingtai City, Hebei Province, China (Chinese Simplified: 冯家寨村 199 号, 冯家寨乡, 广宗县, 邢台市, 河北省, China); DOB 06 Jul 1983; POB Hebei, China; nationality China; citizen China; Email Address wang1126250742@163.com; Gender Male; Digital Currency Address - XBT 3NNcbBcMZokPB2JC2dxYuZrpgcetvyGeJn; Phone Number 8613091279601; Digital Currency Address - TRX TMSbg5fGb4uTV7fK1gEYF9hKAzP3siPsG; National ID No. 130531198307060233 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. XIA, Fengbing (Chinese Simplified: 夏凤兵), No. 320 Fengjiazhai Village, Fengjiazhai Township, Guangzong County, Xingtai City, Hebei Province, China (Chinese Simplified: 冯家寨村 320 号, 冯家寨乡, 广宗县, 邢台市, 河北省, China); DOB 03 Sep 1986; POB Hebei, China; nationality China; citizen China; Gender Male; Digital Currency Address - XBT 38TftW1heYPqvKbiAhT4ttNBqkUPpooXad; alt. Digital Currency Address - XBT bc1qkfqh5p2qsakseg5gnwen6zh5xf3elmku2xaup29mw3l0wnncy3es880dss; Digital Currency Address - TRX TTKnV2S1295UrPr7N67Tp9ykNL7xX2Z4Uj; National ID No. 130531198609030216 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. DJEBELIBAK, Bahman (a.k.a. DJEBLELIBAK, Bahman; a.k.a. SHAH, Bobby), Vancouver, Canada; DOB 19 Jul 1982; nationality Canada; citizen Canada; Gender Male (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. SHEN, Xingbiao (Chinese Simplified: 沈兴标) (a.k.a. "SHEN, Mike"), No. 20, Group 5 Junshe Village, Lvliang Township, Jinhu County, Jiangsu Province, China (Chinese

Simplified: 军舍村五组 20 号, 吕良镇, 金湖县, 江苏省, China); DOB 04 May 1985; POB Jiangsu, China; nationality China; Email Address 183322875@qq.com; Gender Male; Digital Currency Address - XBT 3B7S6zrgxQVQUHTU8wstM23tB9afE7ojuX; Digital Currency Address - ETH 0x530a64c0ce595026a4a556b703644228179e2d57; Phone Number 8613337963690; alt. Phone Number 8615189626230; Digital Currency Address - USDT TEAqwfMhXLomXhZ8KeMhx3njGmQEDnsUR; National ID No. 320831198505045212 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. DU, Changgen (Chinese Simplified: 杜长根), No. 141 Niujiazhai Village, Fengjiazhai Township, Xingtai City, Guangzong County, Hebei Province, China; DOB 01 Mar 1993; POB Hebei Province, China; nationality China; Gender Male; Passport CC7375752 (China); National ID No. 13053119930301025X (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. GAN, Xuebi (Chinese Simplified: 甘雪碧) (a.k.a. "CHEN, Bella"), No. 21 Ganwang Village, Dongshan Village, Jinkou Street, Jiangxia District, Wuhan City, Hubei Province, China (Chinese Simplified: 甘王村 21 号, 金口街洞山村, 江夏区, 武汉市, 湖北省, China); DOB 15 Nov 1992; POB Hubei, China; nationality China; Gender Female; Passport C38528840 (China); National ID No. 420115199211153621 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. GAO, Lanfang (Chinese Simplified: 高兰芳), China; DOB 26 Apr 1979; POB Hebei, China; nationality China; Gender Female; National ID No. 132233197904260229 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: HEBEI GUANLANG BIOTECHNOLOGY CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Hebei Guanlang Biotechnology Co., LTD., a person sanctioned pursuant to E.O. 14059.

8. SONG, Xueqin (Chinese Simplified: 宋雪琴) (a.k.a. "SONG, Shelly"), No. 35 Group 6, Fengling Village, Yuekou Township, Tianmen City, Hubei Province, China (Chinese Simplified: 丰岭村六组 35 号, 岳口镇, 天门市, 湖北省, China); DOB 24 Nov 1990; POB Hubei, China; nationality China; citizen China; Gender Female; National ID No. 429006199011245448 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

9. WANG, Mingming (Chinese Simplified: 王明明), No. 509 Fengjiazhai Village, Fengjiazhai Township, Guangzong County, Xingtai City, Hebei, China (Chinese Simplified: 冯家寨村 509 号, 冯家寨乡, 广宗县, 邢台市, 河北省, China); DOB 12 Mar 1989; POB Hebei, China; nationality China; citizen China; Gender Male; Digital Currency Address - XBT 1MLPqwaFFUBZePTjpR3nxRoK19Cv9mPCc7; alt. Digital Currency Address - XBT 3HePkztPU6UsdENxnyQHFrDZA6eVKeMtvz; alt. Digital Currency Address - XBT TUCsTq7TofTCJRRoHk6RvhMoS2mJLm5Yzq; Digital Currency Address - USDT 0xfac583c0cf07ea434052c49115a4682172ab6b4f; National ID No. 130531198903120212 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: HEBEI GUANLANG BIOTECHNOLOGY CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Hebei Guanlang Biotechnology Co., LTD., a person sanctioned pursuant to E.O. 14059.

10. WANG, Tianmin (Chinese Simplified: 王天民), China; DOB 30 Mar 1988; POB Hebei, China; nationality China; citizen China; Gender Male; National ID No. 130531198803300216 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: QINGDAO CEMO TECHNOLOGY DEVELOP CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Qingdao Cemo Technology Develop Co., LTD., a person sanctioned pursuant to E.O. 14059.

11. WANG, Mingjing (Chinese Simplified: 王明镜), Shijiazhuang, Hebei, China; DOB 08 Feb 1993; POB Hebei, China; nationality China; citizen China; Gender Male; National ID No. 130531199302080213 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: HEBEI XIUNA TRADING CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Hebei Xiuna Trading Co., LTD., a person sanctioned pursuant to E.O. 14059.

12. WANG, Shucheng (Chinese Simplified: 王树程), China; DOB 25 May 1978; POB Hebei Province, China; nationality China; citizen China; Gender Male; National ID No. 13223319780525021X (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: SHANGHAI JARRED INDUSTRIAL CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Shanghai Jarred Industrial Co., LTD., a person sanctioned pursuant to E.O. 14059.

13. YANG, Qi (a.k.a. "YANG, Daisy"), China; DOB 28 Oct 1992; nationality China; citizen China; Gender Female; Passport C18165248 (China) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

14. ZHANG, Wei (Chinese Simplified: 张伟), No. 67, Guangming Street 6th Village, Qiaodong District, Xingtai, Hebei, China (Chinese Simplified: 光明街 6 号村 67 号, 桥东区, 邢台市, 河北省, China); DOB 16 Jun 1977; POB Hebei, China; nationality China; citizen China; Gender Male; Digital Currency Address - XBT 3NU9zkD8CCVGVmYnNNSN7PbU9sSFQBm5UV; Digital Currency Address - ETH 0x961c5be54a2ffc17cf4cb021d863c42dacd47fc1; Digital Currency Address - TRX TRBACioxrdsYEZHvJWiUDZcMdBPpEe5Ub; National ID No. 130502197706161537 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: HEBEI CROVELL BIOTECH CO., LTD.).

Designated pursuant to section 1(b)(ii) of E.O. 14059 for being or having been a leader or official of Hebei Crovell Biotech Co., LTD., a person sanctioned pursuant to E.O. 14059.

Entities:

1. JIANGSU BANGDEYA NEW MATERIAL TECHNOLOGY CO., LTD. (Chinese Simplified: 江苏邦得雅新材料科技有限公司), 8#-2-1211, Jinxiu Jiayuan, Jiangsu West Road, Quanshan District, Xuzhou City, Jiangsu Province 221000, China (Chinese Simplified: 锦绣嘉园 8#-2-1211, 建国西路, 泉山区, 徐州市, 江苏省 221000, China); Website www.bangdeyapharm.com; Phone Number 86017849577539; Organization Established Date 08 Jan 2021; Unified Social Credit Code (USCC) 91320311MA2507C946 (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. XINGTAI DONG CHUANG NEW MATERIAL TECHNOLOGY CO., LTD. (Chinese Simplified: 邢台东创新材料科技有限公司) (a.k.a. XINGTAI DONG INNOVATIVE MATERIAL TECHNOLOGY CO., LTD.), No. 201, Fengjiazhai Industrial Zone, Fengjiazhai Town, Guangzong County, Xingtai City, Hebei Province, China; Website <https://dongchuangchem.com>; Phone Number 8615803390859; Organization Established Date 15 Jun 2021; Unified Social Credit Code (USCC) 91130531MA0GFM1G0U (China) [ILLICIT-DRUGS-EO14059] (Linked To: JIANGSU BANGDEYA NEW MATERIAL TECHNOLOGY CO., LTD.).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Jiangsu Bangdeya New Material Technology Co., LTD., a person sanctioned pursuant to E.O. 14059.

3. JINHU MINSHENG PHARMACEUTICAL MACHINERY CO. LTD (Chinese Simplified: 金湖明生制药机械有限公司) (a.k.a. "MINGSHENG PM"), No. 2 Plant, Bldg. 1, Zone A Industrial Concentration Area, Taji Town, Jinhu County, Jiangsu Province 211600, China; 238-1 Shenhua Road, Jinhu County, Huaian City, Jiangsu Province, China; Website www.jhminshengpm.com; Email Address mike@jhminshengpm.com; Phone Number 8651786800153; Organization Established Date 26 Apr 2013; Unified Social Credit Code (USCC) 913208310676114392 (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. VALERIAN LABS DISTRIBUTION CORP. (f.k.a. HOLLYWOOD VAPE LABS, INC.), 1130-1971 Broadway St, Port Coquitlam, British Columbia V3C 0C9, Canada; Company Number 800741142 (Canada); Registration Number BC1053173 (Canada) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. VALERIAN LABS, INC., 1130-1971 Broadway St, Port Coquitlam, British Columbia V3C 0C9, Canada; Website www.valerianlabs.com; Digital Currency Address - XBT bc1qardcxz845jw83vgfvcemewhuxa0ag9gchjwmcfd; Digital Currency Address - ETH 0x983a81ca6FB1e441266D2FbcB7D8E530AC2E05A2; Digital Currency Address - USDT 0x983a81ca6FB1e441266D2FbcB7D8E530AC2E05A2; Digital Currency Address - USDC 0x983a81ca6FB1e441266D2FbcB7D8E530AC2E05A2; Company Number 755260288 (Canada) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. HANHONG PHARMACEUTICAL TECHNOLOGY CO., LTD. (Chinese Simplified: 湖北翰弘化工有限公司) (f.k.a. HANHONG MEDICINE TECHNOLOGY HUBEI CO., LTD. (Chinese Simplified: 翰弘医药科技湖北有限公司)), H0781, Bldg. 1, No. 58 Guanggu Road, East Lake New Technology Development Zone, Wuhan, Hubei Province 430000, China; Website www.hanhong-med.com; Phone Number 862786832068; Organization Established Date 03 Nov 2016; Unified Social Credit Code (USCC) 91420111MA4KP9GA7L (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. HEBEI CROVELL BIOTECH CO., LTD. (Chinese Simplified: 河北克拉维尔生物科技有限公司), 2-2-1901, Huacheng Lvzhou Phase I, No. 169 Shengli South Street, Qiaoxi District, Shijiazhuang, Hebei 050000, China; Website www.hebeicrovell.com; Phone Number 8613273412322; Organization Established Date 04 Jan 2019; Unified Social Credit Code (USCC) 91130104MA0D4G9Q45 (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

8. HEBEI GUANLANG BIOTECHNOLOGY CO., LIMITED (Chinese Simplified: 河北冠朗生物科技有限公司), Room 1512, 15th Floor, Lucky Centre, 165-171 Wanchai Road, Wanchai, Hong Kong, China; Organization Established Date 17 Dec 2018; Registration Number 2778068 (Hong Kong) [ILLICIT-DRUGS-EO14059] (Linked To: DU, Changgen).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Changgen Du, a person sanctioned pursuant to E.O. 14059.

9. HEBEI GUANLANG BIOTECHNOLOGY CO., LTD. (Chinese Simplified: 河北冠朗生物科技有限公司) (f.k.a. SHIJIAZHUANG FA KE TRADING COMPANY), Room 2914, Bldg. B Weekend Max Mara, No. 108 West Zhongshan Road, Qiaoxi District, Shijiazhuang, Hebei Province 050000, China; Website www.guanlang-group.com; Phone Number 8619930505208; alt. Phone Number 8613273412322; Organization Established Date 30 Apr 2015; Unified Social Credit Code (USCC) 91130104336154011D (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

10. HEBEI XIUNA TRADING CO., LTD. (Chinese Simplified: 河北休纳商贸有限公司) (a.k.a. HEBEI XIUNA COMMERCE AND TRADE CO, LTD.), Room 1408, Block F, Haiyue Tiandi, No. 66 Yuhua West Road, Qiaoxi District, Shijiazhuang, Hebei 050000, China; Email Address 319775872@qq.com; alt. Email Address Service1@Xiunashangmao.com; Phone Number 8615531133331; alt. Phone Number 8613102808677; Organization Established Date 26 Nov 2020; Unified Social Credit Code (USCC) 91130105MA0FRNGTXX (China) [ILLICIT-DRUGS-EO14059] (Linked To: DU, Changgen).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Changgen Du, a person sanctioned pursuant to E.O. 14059.

11. HEBEI YAXIN RESTAURANT MANAGEMENT CO., LTD. (Chinese Simplified: 河北雅新餐饮管理有限公司), Qiaoxi District, Shijiazhuang, Hebei Province, China;

Email Address 414192810@qq.com; Phone Number 8615175978802; Organization Established Date 16 Sep 2021; Unified Social Credit Code (USCC) 91130104MA7B2YLD31 (China) [ILLICIT-DRUGS-EO14059] (Linked To: WANG, Tianmin).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Tianmin Wang, a person sanctioned pursuant to E.O. 14059.

12. HUBEI VAST CHEMICAL CO., LIMITED (Chinese Simplified: 湖北翰弘化工有限公司) (a.k.a. HANHONG MEDICINE TECHNOLOGY HUBEI CO., LIMITED), Office Unit B, ON 9/F, Thomson Commercial Building 8, Thomson Road, Hong Kong, China; Website www.vast-chem.com; Organization Established Date 30 Jun 2020; Registration Number 2956172 (Hong Kong) [ILLICIT-DRUGS-EO14059] (Linked To: DU, Changgen).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Changgen Du, a person sanctioned pursuant to E.O. 14059.

13. QINGDAO CEMO TECHNOLOGY DEVELOP CO., LTD. (Chinese Simplified: 青岛盛茂科技发展有限公司) (a.k.a. QINGDAO SHENGMAO SCIENCE & TECHNOLOGY DEVELOPMENT CO., LTD.; a.k.a. QINGDAO SHENGMAO SCIENCE AND TECHNOLOGY DEVELOPMENT CO., LTD.), Room 30b-E10, No. 15 Donghai West Road, Shinan District, Qingdao, Shandong Province, China; Email Address 414192810@qq.com; Phone Number 8615175978802; Organization Established Date 04 Jun 2021; Unified Social Credit Code (USCC) 91370202MA948F4T49 (China) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

14. SHANGHAI JARRED INDUSTRIAL CO., LTD. (Chinese Simplified: 上海嘉瑞德实业有限公司) (a.k.a. SHANGHAI JIA RUIDE INDUSTRY CO., LTD.), Room 462, Block G, Unit 5, Building 1, No. 688 Qiushi Road, Jinshanwei Town, Jinshan District, Shanghai 201599, China; Phone Number 8617521546635; alt. Phone Number 8615630187573; Organization Established Date 15 Apr 2019; Unified Social Credit Code (USCC) 91310116MA1JBTHR4N (China) [ILLICIT-DRUGS-EO14059] (Linked To: DU, Changgen).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Changgen Du, a person sanctioned pursuant to E.O. 14059.

Dated: October 3, 2023.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-22383 Filed 10-6-23; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF TREASURY

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Acting Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Eric S. Nguyen, Deputy General Counsel, Department of the Treasury—Chair
2. Holly O. Paz, Commissioner, Large Business and International Division (IRS)
3. Edward T. Killen, Deputy Division Commissioner, Tax Exempt and Government Entities (IRS)

Alternate: James C. Lee, Deputy Chief, Criminal Investigation (IRS)

This publication is required by 5 U.S.C. 4314(c)(4).

William M. Paul,

Chief Counsel (Acting), Internal Revenue Service.

[FR Doc. 2023-22416 Filed 10-6-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment Request; Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the

burden associated with the rules for group health plans and health insurance coverage relating to status as a grandfathered health plan under the patient protection and affordable care act.

DATES: Written comments should be received on or before December 11, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Please include, “OMB Number: 1545-2178—Public Comment Request Notice” in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317-5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Grandfathered Health Plan.

OMB Number: 1545-2178.

Form Project Number: TD 9744.

Abstract: This document contains final regulations regarding grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, coverage of dependent children to age 26, internal claims and appeal and external review processes, and patient protections under the Affordable Care Act. It finalizes changes to the proposed and interim final rules based on comments and incorporates sub regulatory guidance issued since publication of the proposed and interim final rules.

Current Actions: Adjustments to the burden estimates result from updated estimates on the number of grandfathered group health plans and increases in wage and postage rates. These updated data inputs reduce the hour burden by 1,550 hours compared with the prior submission and reduce the cost burden by \$241,267 compared with the prior submission.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector—Businesses or other for-profits and not for profit institutions.

Estimated Number of Responses: 8,868,468.

Estimated Time per Respondent: 2 min.

Estimated Total Annual Burden Hours: 655.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 4, 2023.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2023-22428 Filed 10-6-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TREASURY

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Acting Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant

to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. William M. Paul, Acting Chief Counsel/ Deputy Chief Counsel (Technical)
 2. Elizabeth C. Hadden, Deputy Division Counsel/Deputy Associate Chief Counsel (Criminal Investigation)
 3. Mark S. Kaizen, Associate Chief Counsel (General Legal Services)
 4. Rachel D. Levy, Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes)
 5. Joseph W. Spires, Associate Chief Counsel (Small Business and Self-Employed)
- Alternate: Kathryn A. Zuba, Associate Chief Counsel (Procedures and Administration)

This publication is required by 5 U.S.C. 4314(c)(4).

William M. Paul,

Chief Counsel (Acting), Internal Revenue Service.

[FR Doc. 2023–22417 Filed 10–6–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Veteran Financial and Credit Counseling Services Study

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of

Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900–NEW.”

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–NEW” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Veteran Financial and Credit Counseling Services Study.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Section 313 of the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement (Cleland-Dole) Act of 2022 (Pub. L. 117–328) requires the VA to conduct a study on financial and credit counseling by querying financial and credit counselors, homeless programs providers, and subject matters experts regarding the use of financial and credit counseling services. The intent of this study is to identify financial and credit counseling needs of Veterans experiencing homelessness or at risk of experiencing homelessness, the

financial and credit counseling services offered to these Veterans, the specific barriers that these Veterans have in accessing these financial and credit counseling services, and the effects of financial and credit counseling services on such outcomes as employment, housing status, income, and credit score. The information collected will be used to inform VA policy makers, program managers, and process improvement investigators about how to enhance financial and credit counseling services that are offered to Veterans experiencing homelessness or at risk of experiencing homelessness. The results of this study, which will not include personally identifiable information about the individual respondents, will be shared with Congress via a congressionally mandated report.

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 88 FR 47948–47949 on July 25, 2023.

Affected Public: Individuals or households.

Estimated Annual Burden: 567 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,700.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–22339 Filed 10–6–23; 8:45 am]

BILLING CODE 8320–01–P



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Part II

Department of Education

34 CFR Parts 600 and 668

Financial Value Transparency and Gainful Employment; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2023–OPE–0089]

RIN 1840–AD57

Financial Value Transparency and Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary establishes and amends regulations related to gainful employment (GE) to address ongoing concerns about educational programs designed to prepare students for gainful employment in a recognized occupation, but that instead leave them with unaffordable amounts of student loan debt in relation to their earnings, or with no gain in earnings compared to others with no more than a high school education. The Secretary separately seeks to enhance transparency by providing information about financial costs and benefits to students at nearly all academic programs at postsecondary institutions that are eligible to participate in title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: These regulations are effective July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joe Massman. Telephone: (202) 453–7771. Email: GE24@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:**Executive Summary***Purpose of This Regulatory Action*

The Federal Government makes significant annual investments under title IV of the HEA through programs that provide financial assistance to help students pay for postsecondary education and training. This includes both Federal grants and Federal loans, with the largest amount of such aid flowing through Pell Grants and Direct Loans. These investments in education amount to well over \$100 billion in new Pell Grants and Direct Loans in total made each year.¹

¹ Note that the dollar figure in the text above refers to the sum of all Pell Grants and Direct Loans made each year. The cost of Direct Loans, which is the lion's share of this amount, to the Federal Government is less than the amount disbursed since borrowers repay, as expanded on below. This final rule affects a small fraction of the total amount, as detailed below.

The Federal Government's commitment to postsecondary education and training is well-justified. Postsecondary education and training generate important benefits both to the students pursuing new knowledge and skills and to the Nation overall. Higher education increases wages and lowers unemployment risk,² and leads to myriad non-financial benefits including better health, job satisfaction, and overall happiness.³ In addition, increasing the number of individuals with postsecondary education creates social benefits, including productivity spillovers from a better educated and more flexible workforce,⁴ increased civic participation,⁵ improvements in health and well-being for the next generation,⁶ and innumerable intangible benefits that elude quantification. In addition, the improvements in productivity and earnings lead to increases in tax revenues from higher earnings and lower rates of reliance on social safety net programs. These downstream increases in net revenue to the Government can be so large that public investments in higher education, including those that Congress established in title IV, HEA, more than pay for themselves.⁷

These benefits are not guaranteed, however. Research has demonstrated that the returns, especially the gains in earnings students enjoy as a result of their education, vary dramatically across institutions and among programs within those institutions.⁸ As we illustrate in the Regulatory Impact

² Barrow, L. & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics*, 7(1), 519–555. Card, D. (1999). The Causal Effect of Education on Earnings. *Handbook of Labor Economics*, 3, 1801–1863.

³ Oreopoulos, P. & Salvanes, K.G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives*, 25(1), 159–184.

⁴ Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review*, 94(3), 656–690.

⁵ Dee, T.S. (2004). Are There Civic Returns to Education? *Journal of Public Economics*, 88(9–10), 1697–1720.

⁶ Currie, J. & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics*, 118(4), 1495–1532.

⁷ Hendren, N. & Sprung-Keyser, B. (2020). A Unified Welfare Analysis of Government Policies. *The Quarterly Journal of Economics*, 135(3), 1209–1318.

⁸ Hoxby, C.M. (2019). The Productivity of U.S. Postsecondary Institutions. In *Productivity in Higher Education*, Hoxby, C.M. & Stange, K.M. (eds). University of Chicago Press. Lovenheim, M. & Smith, J. (2023). Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6*, Hanushek, E., Woessmann, E. & Machin, S. (eds). New Holland.

Analysis (RIA) of this final rule, even among the same types of programs—that is, among programs with similar academic levels and fields of study—both the costs and the outcomes for students differ widely. Most postsecondary programs provide benefits to students in the form of higher wages that help them repay any loans they may have obtained to attend the program. But too many programs fail to increase graduates' wages, having little or even negative effects on graduates' earnings.⁹ At the same time, too many programs charge much higher tuition than similar programs with comparable outcomes, leading students to borrow much more than they would have needed had they chosen a more affordable program.

While increased borrowing is indicative of higher education costs-of-attendance, financing the costs of postsecondary education and training with Federal student loans creates significant risk for borrowers and the Federal Government (as well as taxpayers). In particular, if students' earnings after college are low, then they are likely to face difficulty in repaying their loans and will be more likely to default. The associated penalties and delays in repayment make the student loan more costly to repay, and, by damaging the borrower's credit, may also increase costs of other borrowing considerably.¹⁰ From the Federal Government's perspective, if borrowers earn less, then they are also entitled to repay less of their loans under Income-Driven Repayment (IDR) plans and can have their loans forgiven after preset amounts of time in repayment. And if borrowers default on a loan, they may end up repaying less than they borrowed depending on the success of various collections tools available to the Government. As a result, low labor market earnings and low earnings relative to debt both drive up the costs, to both the borrower and taxpayers, of

⁹ Cellini, S. & Turner, N. (2018). Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data. *Journal of Human Resources*, 54(2).

¹⁰ For example, a 2023 Consumer Financial Protection Bureau analysis suggests that a default on a borrower's credit record could lower their credit score by about 50 points, which might result in an additional cost of \$1,700 on a typical auto loan due to less favorable interest terms. Gibbs, Christa (2023). Initial Fresh Start Program Changes Followed by Increased Credit Scores for Affected Student Loan Borrowers. Consumer Financial Protection Bureau (<https://www.consumerfinance.gov/about-us/blog/initial-fresh-start-program-changes-followed-by-increased-credit-scores-for-affected-borrowers/>).

postsecondary investments financed with student loans.

With college tuition consistently rising faster than inflation, and given the growing necessity of a postsecondary credential to compete in today's economy, it is critical for students, families, and taxpayers alike to have accurate and transparent information about the possible financial consequences of their postsecondary program options. Providing information on the typical earnings outcomes, borrowing amounts, costs of attendance, and sources of financial aid—and providing it directly to prospective students in a salient way at a key moment in their decision-making process—would help students make more informed choices. The same information will also allow taxpayers and college stakeholders to better assess whether public and private resources are being effectively used. For many students, and for many stakeholders, these financial considerations would, appropriately, be just one of many factors used in deciding whether and where to enroll. But as noted throughout this final rule including the RIA, it is clear that both prospective students and the population in general consider these financial factors as among the most important in assessing postsecondary education performance.

For programs that consistently produce graduates with very low earnings, or with earnings that are too low to repay the amount the typical graduate borrows to complete a credential, additional measures are needed to protect students from financial harm. Making information available has been shown to improve consequential financial choices across a variety of settings. But it has also been shown to be a limited remedy, especially for more vulnerable populations who may struggle to access the information, or who have less support in interpreting and acting upon the relevant information.¹¹

To address these issues, the Department establishes subparts Q and S of part 668, and makes supporting amendments to §§ 600.10, 600.21, 668.2, 668.13, 668.43, and 668.91.

(1) In subpart Q, we establish a financial value transparency framework. That framework will increase the quality and availability of information provided directly to students about the costs, sources of financial aid, and outcomes of students enrolled in all eligible programs. In part, the transparency framework establishes measures of enhanced earnings and affordable debt—more specifically, the earnings premium (EP measure) that typical program graduates experience relative to the earnings of typical high school graduates, as well as the debt service burden (debt-to-earnings ratio or D/E rates measure) for typical graduates. It further establishes performance benchmarks for each measure, denoting a threshold level of performance below which the program may have adverse financial consequences to students. This information will be made available to all students via a program information website maintained by the Department and described in amended § 668.43. For programs that do not meet the performance benchmarks for the D/E rates measure, prospective students will be required to acknowledge having viewed these disclosures before entering into enrollment agreements with an institution. Further, the Department's program information website will provide the public, taxpayers, and the Government with relevant information with which they may act to better safeguard the Federal investment in these programs. The transparency framework will also provide institutions with meaningful information that they can use to compare their performance to other institutions and improve student outcomes in these programs.

(2) In subpart S, we establish an accountability and eligibility framework for gainful employment programs. This GE program accountability framework is specific to educational programs that, as a statutory condition of eligibility to participate in title IV, HEA, are required to provide training that prepares students for gainful employment in a recognized occupation or profession (GE programs). GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private nonprofit institutions such as community colleges. The GE program eligibility framework will use the same earnings premium and debt-burden measures from the transparency framework to determine whether a GE program remains eligible for title IV, HEA participation. The GE eligibility criteria define what it means to prepare students for gainful employment in a

recognized occupation, and they tie program eligibility to whether GE programs provide education and training to their title IV, HEA students that lead to earnings beyond those of high school graduates and sufficient to allow students to repay their student loans. GE programs that fail the same measure in any two out of three consecutive years for which the measure is calculated will not be eligible to participate in title IV, HEA programs.

The Department has previously issued regulations on these issues three times. We refer to those regulatory actions as the 2011 Prior Rule (76 FR 34385), the 2014 Prior Rule (79 FR 64889), and the 2019 Prior Rule (84 FR 31392), which rescinded the 2014 Prior Rule. For a detailed discussion of the history of these regulations, please see the *Background* section of the notice of proposed rulemaking that was published in the **Federal Register** on May 19, 2023 (88 FR 32300) (NPRM). This final rule departs from the 2019 Prior Rule and partly reinstates provisions of the 2014 Prior Rule, but this final rule also departs in certain respects from the 2014 Prior Rule to improve the regulations in light of new data and current circumstances, as discussed in the NPRM.¹²

The financial value transparency framework covers all programs that participate in the title IV, HEA programs, and it will dramatically enhance the quality of information available to all students so that they may better assess the financial consequences of their education choices. As explained in the NPRM and elaborated below, the framework will improve on the information currently available to students by generating program-level information on cost of attendance and available aid for all types of students and by ensuring the information is delivered to students. The acknowledgment requirements ensure this information is viewed before students enroll when performance measures indicate a heightened risk of adverse borrowing outcomes for students.

With respect to GE programs, the Department remains concerned about the same problems that motivated our 2011 and 2014 Prior Rules. These included the growth in student loan debt generally, and especially increased borrowing at private for-profit colleges, increasingly high rates of default, higher costs, and lawsuits and investigations into the deceptive practices of many institutions.

¹² 88 FR 32300, 32306 (May 19, 2023).

¹¹ Baker, Dominique J., Cellini, Stephanie Riegg, Scott-Clayton, Judith & Turner, Lesley J. (2021). Why Information Alone Is Not Enough to Improve Higher Education Outcomes. The Brookings Institution (www.brookings.edu/blog/brown-center-chalkboard/2021/12/14/why-information-alone-is-not-enough-to-improve-higher-education-outcomes/). Steffel, Mary, Kramer II, Dennis A., McHugh, Walter & Ducoff, Nick (2019). Information Disclosure and College Choice. The Brookings Institution (www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf).

Overall, the amount of outstanding student loan debt is even higher than it was at the time of the 2014 Prior Rule. Then we cited a total portfolio of \$1,096.5 billion. It is now 49 percent larger—at \$1,634 billion outstanding. The number of individuals with outstanding student loans is also 3.5 million higher.¹³

The 2011 and 2014 rules were issued during a time of growth at private for-profit colleges when the Department was concerned about the effects of such growth. While the sector is not currently growing at the rates it did at that time, its 12-month full-time-equivalent enrollment in 2020–21 was above its levels in 2017–18.¹⁴ During those years, enrollment in private for-profit colleges grew 5 percent even as public and private nonprofit institutions saw a 7 percent decline. Similarly, the share of title IV, HEA funds going to private for-profit colleges in 2020–21 was at the same level as in 2016–17.¹⁵

Loan usage at private for-profit colleges also remains high. In the 2014 Prior Rule we noted concerns that the borrowing rate in 2011–12 among less-than-two-year institutions was 60 percent at private for-profit institutions versus 10 percent at public institutions.¹⁶ Data from 2019–20 show that 63 percent of students in less-than-two-year private for-profit institutions took out loans compared to 18 percent of those at public colleges, though the estimate for public colleges has a high standard error.¹⁷ In fact, the borrowing

rate at two-year and less-than-two-year private for-profit colleges in 2019–20 was higher than in 2015–2016. And among two-year for-profit colleges it even exceeds the rates in 2011–12.¹⁸

Issues with default rates also did not abate between 2014 and the national pause on student loan payments and interest in 2020 due to the COVID–19 national emergency. From 2015 to 2019 there were still more than 1 million new Direct Loan defaults a year. And the number of new Direct Loan defaults in the 2019 fiscal year was higher than in 2015.¹⁹ The official cohort default rates did see slight declines from fiscal year 2012 to fiscal year 2017 (the last cohort before the pause would affect results). But the decline in the overall rate was nearly double what it was at private for-profit colleges (a reduction of 2.1 percentage points versus 1.1 percentage points).²⁰ And this is despite the closure of large for-profit colleges with poor track records, such as ITT Technical Institute and Corinthian Colleges.

Regarding lawsuits and investigations, the Department notes that these actions still continue today. Just last year the California Department of Justice won its

case against Ashford University, and the Secretary has concluded substantial misrepresentations brought to light in that case continued until 2020.²¹ The U.S. Department of Justice has also continued to settle cases involving for-profit colleges.²² Other State attorneys general or city officials have also reached settlements with for-profit institutions over allegations about the same type of behavior identified by the Department in the 2014 rule, though these settlements did not come with an admission of wrongdoing.²³

According to the Department's data and analyses, which are presented in the RIA of this final rule,²⁴ GE programs account for a disproportionate share of students who complete programs with very low earnings and unmanageable debt. The expansion of IDR plans for Federal student loans, which has risen since the 2014 Prior Rule was released, partially shields borrowers from these risks. But such after-the-fact protections do not address underlying program failures to prepare students for gainful employment in the first place, and they shift the risks of nonpayment of loans from students with poor labor market outcomes and high debt to taxpayers.

(2023). Table A–1. Selected financial aid receipt: Percentage of undergraduates receiving selected types of financial aid. In *2019–20 National Postsecondary Student Aid Study (NPSAS:20) First Look at Student Financial Aid Estimates for 2019–20* (NCES 2023–466). U.S. Department of Education (<https://nces.ed.gov/pubs2023/2023466.pdf>).

¹⁸ Compare the previous citation with Radwin, D., Wine, J., Siegel, P., Bryan, M. & RTI International (2013). Table 1. Percentage of undergraduates receiving selected types of financial aid, by type of institution, attendance pattern, dependency status, and income level: 2011–12. In *2011–12 National Postsecondary Student Aid Study (NPSAS:12) Student Financial Aid Estimates for 2011–12* (NCES 2013–165). U.S. Department of Education (<https://nces.ed.gov/pubs2013/2013165.pdf>). Radwin, D., Conzelmann, J. G., Nunnery, A., Lacy, T. A., Wu, J., Lew, S., Wine, J., Siegel, P. & RTI International (2018). Table 1. Percentage of undergraduates receiving selected types of financial aid, by control and level of institution, attendance pattern, dependency status, and income level: 2015–16. In *2015–16 National Postsecondary Student Aid Study (NPSAS:16) Student Financial Aid Estimates for 2015–16 First Look* (NCES 2018466). National Center for Education Statistics (<https://nces.ed.gov/pubs2018/2018466.pdf>).

¹⁹ U.S. Department of Education (Sept. 14, 2023). Direct Loans Entering Default. National Student Loan Data System (NSLDS) (<https://studentaid.gov/sites/default/files/DLEnteringDefaults.xls>).

²⁰ Federal Student Aid Office, U.S. Department of Education (2016). National Student Loan Default Rates from its 2016 Official FY2013 Cohort Default Rate Briefing (<https://fsapartners.ed.gov/sites/default/files/attachments/eannouncements/2016OfficialFY2013CDRBrifing.pdf>). Federal Student Aid Office, U.S. Department of Education (2020). FY 2017 Official National Cohort Default Rates with Prior Year Comparison and Total Dollars as of the Date of Default and Repayment. In *2020 Cohort Default Rate National Briefing for FY2017* (https://fsapartners.ed.gov/sites/default/files/attachments/2020-09/093020CDRNationalBriefingFY17Attach_0.pdf).

²¹ California Department of Justice, Office of the Attorney General (Mar. 7, 2022). Attorney General Bonta: Ashford University Must Pay \$22 Million in Penalties for Defrauding California Students (<https://oag.ca.gov/news/press-releases/attorney-general-bonta-ashford-university-must-pay-22-million-penalties>). U.S. Department of Education (Aug. 30, 2023). Biden-Harris Administration Approves \$72 Million in Borrower Defense Discharges for over 2,300 Borrowers Who Attended Ashford University (<https://www.ed.gov/news/press-releases/biden-harris-administration-approves-72-million-borrower-defense-discharges-over-2300-borrowers-who-attended-ashford-university>).

²² U.S. Attorney's Office, Middle District of Louisiana (June 23, 2017). School Owner and CEO Convicted of Federal Financial Aid Fraud Offenses and Money Laundering. U.S. Department of Justice (<https://www.justice.gov/usao-mdla/pr/school-owner-and-ceo-convicted-federal-financial-aid-fraud-offenses-and-money>). U.S. Attorney's Office, District of Connecticut (May 27, 2022). School and Owner Pay Over \$1 Million to Resolve Allegations of Attempts to Improperly Influence the School's Student Loan Default Rate. U.S. Department of Justice (<https://www.justice.gov/usao-ct/pr/school-and-owner-pay-over-1-million-resolve-allegations-attempts-improperly-influence>).

²³ Office of Attorney General Maura Healey (Aug. 8, 2018). American Military University Pays \$270,000 for Alleged Failure to Disclose Job Prospects, High-Pressure Enrollment Tactics. Mass.gov (<https://www.mass.gov/news/american-military-university-pays-270000-for-alleged-failure-to-disclose-job-prospects-high-pressure-enrollment-tactics>). Department of Consumer and Worker Protection (Oct. 3, 2022). Department of Consumer and Worker Protection Settles With ASA College for Deceptive Advertising Targeting Immigrants and Other Vulnerable New Yorkers. NYC.gov (<https://www.nyc.gov/site/dca/media/pr100322-DCWP-Settles-With-ASA-College-for-Deceptive-Advertising.page>).

²⁴ See Tables 4.4, 4.5, 4.8, and 4.9 below.

¹³ U.S. Department of Education, Federal Student Aid (2023). Federal Student Aid Portfolio Summary (data set). National Student Loan Data System (NSLDS) (<https://studentaid.gov/sites/default/files/fswag/datacenter/library/PortfolioSummary.xls>).

¹⁴ See U.S. Department of Education, National Center for Education Statistics (2021). Table 8. Twelve-month full-time-equivalent enrollment at Title IV institutions, by student level, level and control of institution: United States, 2020–21. IPEDS Data Explorer (https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=32468). U.S. Department of Education, National Center for Education Statistics (2018). Table 8. Twelve-month full-time-equivalent enrollment at Title IV institutions, by student level, level and control of institution: United States, 2017–18. IPEDS Data Explorer (https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&overlayTableId=25212).

¹⁵ U.S. Department of Education, Federal Student Aid (2023). 2022–2023 Grant and Loan Volume by School Type (data set). FSA Data Center (<https://studentaid.gov/sites/default/files/fswag/datacenter/library/SummarybySchoolType.xls>).

¹⁶ U.S. Department of Education (2014). Program Integrity: Gainful Employment. 79 FR 65033, October 31, 2014. **Federal Register**, 34 CFR parts 600 and 668 (Docket ID ED–2014–OPE–0039) (<https://www.federalregister.gov/d/2014-25594/p-2324>).

¹⁷ Cameron, M., Johnson, R., Lacy, T.A., Wu, J., Siegel, P., Holley, J., Wine, J. & RTI International

The reasons for the departure from the 2019 rescission are discussed in detail in the NPRM of the rule, with detail on particular points discussed further below.

In light of the HEA differentiation between career training (GE) programs and other eligible programs, through statutory language that defines title IV-eligible career training programs as those that prepare students for gainful employment, the Department has different responsibilities with respect to GE programs and different tools available in administering the title IV, HEA programs. For these programs, where labor market outcomes are central to their mission, the Department establishes a clear and administrable GE program accountability framework based on the EP and D/E measures, which the Department will use to evaluate what it means to prepare students for gainful employment in a recognized occupation and whether a GE program is eligible to participate in title IV, HEA.

While the financial value transparency framework and the GE program accountability framework are both designed to improve student financial outcomes, they differ in scope and approach, derive from the Department's exercise of different regulatory authorities. The two frameworks are intended to function independently, and their respective components are intended to be severable. Elsewhere we discuss the complementary nature of the two frameworks as well as their severability,²⁵ and we address the Department's authority to take action in the next section. In subsequent sections we explain our reasoning and the evidence relevant to the positions that we adopt, and we identify a number of constructive public comments that, upon reflection, have convinced the Department to modify certain proposals made in the NPRM. But our core conclusions remain the same. Considering the promise of postsecondary education and training in its many forms alongside the Federal Government's investment therein and all applicable law, the Department adopts this final rule.

Authority for This Regulatory Action

To address the need for regulatory action, the Department amends §§ 600.10, 600.21, 668.2, 668.13, 668.43, and 668.91, and establishes subparts Q and S of part 668.

The Department's authority to establish the financial value transparency framework and the GE program accountability framework is derived primarily from: first, the Secretary's generally applicable rulemaking authority, which includes but is not limited to provisions regarding data collection and dissemination; second, authorizations and directives within title IV of the HEA regarding the collection and dissemination of potentially useful information about higher education programs, as well as provisions regarding institutional eligibility to benefit from title IV; and third, the further provisions within title IV, HEA that address the eligibility of GE programs.

As for general and crosscutting rulemaking authority, section 410 of the General Education Provisions Act (GEPA) grants the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.²⁶ This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students. Moreover, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations that the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.²⁷

Section 431 of GEPA grants the Secretary additional authority to require institutions to make data available to the public about the performance of their programs and about students enrolled in those programs. That section directs the Secretary to collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their intended purposes, and also to inform the public about federally supported education programs.²⁸ This provision lends additional support to the reporting requirements and the Department's program information website, which will enable the Department to collect data and information for the purpose of

developing objective measures of program performance, not only for the Department's use in evaluating programs but also to inform students, their families, institutions, and others about those federally supported programs.

As for provisions within title IV, HEA, several of them address the effective delivery of information about postsecondary education programs. For example, section 131 of the Higher Education Act of 1965, as amended (HEA), provides that the Department's websites should include information regarding higher education programs, including college planning and student financial aid,²⁹ the cost of higher education in general, and the cost of attendance with respect to all institutions of higher education participating in title IV, HEA programs.³⁰ Those authorizations and directives expand on more traditional methods of delivering important information to students, prospective students, and others, including within or alongside application forms or promissory notes for which acknowledgments by signatories are typical and longstanding.³¹ Educational institutions have been distributing information to students at the direction of the Department and in accord with the applicable statutes for decades.³²

The GE program accountability framework also is supported by the Department's statutory responsibilities to observe eligibility limits in the HEA. Section 498 of the HEA requires institutions to establish eligibility to provide title IV, HEA funds to their students. Eligible institutions must also meet program eligibility requirements for students in those programs to receive title IV, HEA assistance.

One type of program for which certain categories of institutions must establish program-level eligibility is, in the words of section 101 and section 102 of the HEA, a "program of training to prepare students for gainful employment in a

²⁹ See, for example, 20 U.S.C. 1015(e).

³⁰ 20 U.S.C. 1015(a)(3), (b), (c)(5), (e), (h). See also section 111 of the Higher Education Opportunity Act, 20 U.S.C. 1015a, which authorizes the College Navigator website and successor websites.

³¹ See, for example, 20 U.S.C. 1082(m), regarding common application forms and promissory notes or master promissory notes. See also 34 CFR 685.304(a)(3), regarding Direct Loan counseling and acknowledgments.

³² A compilation of the current and previous editions of the *Federal Student Aid Handbook*, which includes detailed discussion of consumer information and school reporting and notification requirements, is posted at <https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.

²⁵ See the NPRM, 88 FR 32300, 32341 (May 19, 2023), for a detailed discussion of how these regulations are intended to be severable.

²⁶ 20 U.S.C. 1221e–3.

²⁷ 20 U.S.C. 3474.

²⁸ 20 U.S.C. 1231a(2)–(3). "Applicable program" means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. 20 U.S.C. 1221(c)(1).

recognized occupation.”³³ Section 481 of the HEA articulates this same requirement by defining, in part, an “eligible program” as a “program of training to prepare students for gainful employment in a recognized profession.”³⁴ The HEA does not more specifically define “program of training to prepare,” “gainful employment,” “recognized occupation,” or “recognized profession” for purposes of determining the eligibility of GE programs for participation in title IV, HEA. The Secretary and the Department have a legal duty to interpret, implement, and apply those terms in order to observe the statutory eligibility limits in the HEA. In the section-by-section discussion in the NPRM, we explained further the Department’s interpretation of the GE statutory provisions and how those provisions should be implemented and applied.

The statutory eligibility criteria for GE programs are one part of the foundation of authority for warnings from institutions to prospective and enrolled GE students. In the GE context, the Department has not only a statutory basis for pursuing the effective dissemination of information to students about a range of GE program attributes and performance metrics,³⁵ but also the authority to use certain metrics to determine that an institution’s program is not eligible to benefit, as a GE program, from title IV, HEA assistance. When an institution’s program is at risk of losing eligibility based on a given metric, the Department may then require the institution that operates the at-risk program to alert prospective and enrolled students that they may not be able to receive title IV, HEA assistance for enrollment in the program in future years. Without a direct communication from the institution to prospective and enrolled students, the students may lack information critical to their program enrollment decisions contrary to the text, purpose, and traditional understandings of the relevant statutes as described above.

The above authorities collectively empower the Secretary to promulgate regulations to (1) require institutions to report information about their programs

to the Secretary; (2) require prospective students, with respect to certificate programs and graduate degree programs that do not meet certain financial value measures established by the Department, to acknowledge having viewed the information on the Department’s program information website before entering into an enrollment agreement; (3) establish measures to determine the eligibility of GE programs for participation in title IV, HEA; and (4) require institutions to provide warnings to students and prospective students with respect to GE programs that may lose their title IV, HEA eligibility in the next year, and require the students to acknowledge having viewed the warning through the Department’s program information website. We provide additional detail on these provisions in the discussions below.

Summary of the Major Provisions of This Regulatory Action

As discussed under “Purpose of This Regulatory Action,” these regulations establish a financial value transparency framework and a GE program accountability framework.

Through this regulatory action, the Department establishes the following:

(1) In subpart Q, a financial value transparency framework that will increase the quality and availability of information provided directly to students about the costs, sources of financial aid, and outcomes of students enrolled in all title IV, HEA eligible programs. As part of this framework, we establish a measure of the earnings premium that typical program graduates experience relative to the earnings of typical high school graduates. As part of this framework, we also establish a mechanism for measuring the debt service burden for typical graduates. Further, we establish performance benchmarks for each measure, denoting a threshold level of performance below which students’ enrollment in the program may have adverse financial consequences. This information will be made available via a program information website maintained by the Department, and, for certificate programs and graduate degree programs with poor outcomes under the debt-burden measures, prospective students will be required to acknowledge viewing this information before entering into enrollment agreements with an institution. Further, through the Department’s program information website, we will provide the public, taxpayers, and the Government with relevant information which they can use to better safeguard the Federal

investment in these programs. Finally, the financial value transparency framework will provide institutions with meaningful information that they can use to compare the performance of the programs to that of other institutions and improve student outcomes in these programs. For a detailed discussion of the financial transparency framework, see the “Financial Value Transparency Framework” section of the NPRM.³⁶

(2) In subpart S, we create an accountability framework for career training programs (also referred to as gainful employment programs or GE programs) that uses the same earnings premium and debt-burden measures as subpart Q to determine whether a GE program remains eligible for participation in title IV, HEA. The GE eligibility criteria are used to identify those programs that prepare students for gainful employment in a recognized occupation, as that language is used in the HEA, and they tie program eligibility to whether GE programs provide education and training to their title IV, HEA students that lead to earnings beyond those of high school graduates and sufficient to allow students to repay their student loans. GE programs that fail the same measure in any two out of three consecutive years for which the measure is calculated will lose eligibility for participation in title IV, HEA programs. Relatedly, for GE programs that may lose their title IV, HEA eligibility in the next year, institutions must provide warnings to those programs’ enrolled and prospective students, and those students must acknowledge having viewed the warning through the Department’s program information website before certain specified events occur, including the signing of an enrollment agreement or the disbursement of title IV funds. For a detailed discussion of the GE program accountability framework, see the “Gainful Employment Criteria” section of the NPRM.³⁷

Specifically, the final regulations adopt the following changes.

- Amend § 600.10 to require an institution seeking to establish the eligibility of a GE program to add the program to its application.
- Amend § 600.21 to require an institution to notify the Secretary within 10 days of any update to information included in the GE program’s certification.
- Amend § 668.2 to define certain terminology used in subparts Q and S, including “annual debt-to-earnings rate,” “classification of instructional

³³ 20 U.S.C. 1001(b)(1); 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A).

³⁴ 20 U.S.C. 1088(b)(1)(A)(i).

³⁵ See *Ass’n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176, 198–200 (D.D.C. 2015) (recognizing statutory authority to require institutions to disclose certain information about GE programs to prospective and enrolled GE students), *aff’d*, 640 F. App’x 5, 6 (D.C. Cir. 2016) (per curiam) (unpublished) (indicating that the plaintiff’s challenge to the GE disclosure provisions was abandoned on appeal).

³⁶ 88 FR 32300, 32325 (May 19, 2023).

³⁷ 88 FR 32300, 32343 (May 19, 2023).

programs (CIP) code,” “cohort period,” “credential level,” “debt-to-earnings rates (D/E rates),” “discretionary debt-to-earnings rates,” “earnings premium,” “earnings threshold,” “eligible non-GE program,” “Federal agency with earnings data,” “gainful employment program (GE program),” “institutional grants and scholarships,” “length of the program,” “poverty guideline,” “prospective student,” “student,” and “substantially similar program.”

- Amend § 668.43 to establish a Department website with program-level financial information, and to require institutions to inform a prospective student how to access that website before the student enrolls, registers, or makes a financial commitment to the institution.

- Amend § 668.91 to provide that a hearing official must terminate the eligibility of a GE program that fails to meet the GE program accountability metrics established in this rule, unless the hearing official concludes that the Secretary erred in the calculation.

- Add § 668.401 to identify the scope and purpose of the newly established financial value transparency regulations in subpart Q.

- Add § 668.402 to provide a framework for the Secretary to determine whether a program leads to high debt burden or low earnings, including establishing annual and discretionary D/E rate metrics and associated outcomes, and establishing an earnings premium metric and associated outcomes.

- Add § 668.403 to establish a methodology to calculate annual and discretionary D/E rates, including parameters to determine annual loan payment, annual earnings, loan debt, and assessed charges, as well as to provide exclusions, and specify when D/E rates will not be calculated.

- Add a new § 668.404 to establish a methodology to calculate a program’s earnings premium measure, including parameters to determine median annual earnings, as well as to provide exclusions, and specify when the earnings threshold measure will not be calculated.

- Add § 668.405 to establish a process by which the Secretary will obtain administrative and earnings data to issue D/E rates and the earnings premium measure.

- Add § 668.406 to require the Secretary to notify institutions of their financial value transparency metrics and outcomes.

- Add § 668.407 to require current and prospective students to acknowledge having seen the information on the website maintained

by the Secretary if a program has failed the D/E rates measure, to specify the content and delivery parameters of such acknowledgments, and to require that students must provide the acknowledgment before entering an enrollment agreement with an institution.

- Add § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a program and to define the timeframe for institutions to report this information.

- Add § 668.409 to establish severability protections ensuring that if any provision in subpart Q is held invalid, the remaining provisions of that subpart and other subparts would continue to apply.

- Add § 668.601 to identify the scope and purpose of newly established GE regulations under subpart S.

- Add § 668.602 to establish criteria for the Secretary to determine whether a GE program prepares students for gainful employment in a recognized occupation.

- Add § 668.603 to define the conditions under which a failing GE program would lose title IV, HEA eligibility, to provide the opportunity for an institution to appeal a loss of eligibility solely on the basis of a miscalculated D/E rate or earnings premium, and to establish a period of ineligibility for failing GE programs that lose eligibility or voluntarily discontinue eligibility.

- Add § 668.604 to require institutions to provide the Department with transitional certifications, as well as to certify, when seeking recertification or the approval of a new or modified GE program, that each eligible GE program offered by the institution is included in the institution’s recognized accreditation or, if the institution is a public postsecondary vocational institution, that the program is approved by a recognized State agency.

- Add § 668.605 to require warnings to current and prospective students if a GE program is at risk of a loss of title IV, HEA eligibility, to specify the content and delivery requirements for such warnings, and to provide that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

- Add § 668.606 to establish severability protections ensuring that if any GE provision under subpart S is held invalid, the remaining provisions of that subpart and of other subparts would continue to apply.

Summary of the Costs and Benefits

The Department estimates that the final regulations will generate benefits to students, postsecondary institutions, and the Federal Government that exceed the costs. The Department also estimates substantial transfers, primarily in the form of title IV, HEA aid shifting between students, postsecondary institutions, and the Federal Government, generating a net budget savings for the Federal Government. Net benefits are created primarily by shifting students from low-financial-value to high-financial-value programs or, in some cases, away from low-financial-value postsecondary programs to non-enrollment. These shifts would be due to improved and standardized market information about all postsecondary programs that would facilitate better decision making by current and prospective students and their families; the public, taxpayers, and the Government; and institutions. Furthermore, the GE program accountability framework will improve the quality of student options by directly eliminating the ability of low-financial-value GE programs to receive title IV, HEA funds. This enrollment shift and improvement in program quality will result in higher earnings for students, which will generate additional tax revenue for Federal, State, and local governments. Students will also benefit from lower accumulated debt and lower risk of default.

The primary costs of the final regulations related to the financial value transparency and GE accountability requirements are the additional reporting required by institutions and the time for students to acknowledge having seen the program information website. The final regulations may also result in some students at failing programs deciding to end their educational pursuits, even if they would benefit from re-enrollment. See “Discussion of Costs, Benefits, and Transfers” in the RIA in this document for a more complete discussion of the costs and benefits of the regulations.

The NPRM and Public Comment

The NPRM included proposed regulations on five topics—Financial Value Transparency and Gainful Employment, Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit. These final regulations contain only provisions on Financial Value Transparency and GE. We will publish another final rule with the remaining four topics at a later date. The later rule will include summaries and responses

to comments that made some references to the GE program accountability framework but are primarily concerned with the financial responsibility, administrative capability, or certification procedures sections.

In response to our invitation in the NPRM, 7,583 parties submitted comments on the proposed regulations. While the majority of respondents commented on the provisions we address in this final rule, the number includes all who commented on any of the five topics addressed in the NPRM.

In the NPRM, we discussed the background of the regulations,³⁸ the relevant data available,³⁹ and the key regulatory changes that the Department was proposing,⁴⁰ including the changes from the 2019 Prior Rule currently in effect, and the differences between the NPRM's proposal and the now-rescinded 2014 Prior Rule. Terms used but not defined in this document have the meanings set forth in the NPRM. The final regulations contain a number of changes from the NPRM. We fully explain the changes in the *Analysis of Comments and Changes* section of the preamble that follows.

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes or recommendations that are out of the scope of this regulatory action or that would require statutory changes.

Analysis of Public Comments and Changes: Analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General

Rulemaking Process

Comments: Several commenters asked the Department to extend the public comment period an additional 30 days. These commenters contended that, given the length of the NPRM, they needed more time to review it if they were to provide informed comment. The commenters also observed that Executive Orders 12866 and 13563 cite 60 days as the recommended length for public comment.

Discussion: The Department believes the public comment period was sufficient for commenters to review and provide meaningful feedback on the NPRM. We note that the public comment period for the 2019 Prior Rule also was 30 days.⁴¹ In response to the NPRM we received comments from more than 7,500 individuals and

entities, including many detailed and lengthy comments. Those comments have helped the Department identify many areas for improvements and clarification that result in an improved final rule. Moreover, the negotiated rulemaking process, including multiple negotiating sessions, provided a significant additional opportunity for public engagement and feedback that exceeds what is typically available in notice-and-comment rulemaking outside the HEA's statutory framework. The Department began the rulemaking process by inviting public input through a series of public hearings in June 2021. We received more than 5,300 public comments as part of the public hearing process. After the hearings, the Department sought non-Federal negotiators for the negotiated rulemaking committee who represented constituencies that would be affected by our rules. As part of these non-Federal negotiators' work on the rulemaking committee, the Department asked that they reach out to the broader constituencies for feedback during the negotiation process. During each of the three negotiated rulemaking sessions, we provided opportunities for the public to comment, including in response to draft regulatory text, which was available prior to the second and third sessions. The Department and the non-Federal negotiators considered those comments to inform further discussion at the negotiating sessions, and we used the information when preparing our proposed rule. The Executive orders recommend an appropriate period for public comment, but they do not require more than 30 days, nor do their recommendations account for the HEA's negotiated rulemaking requirements, which the Department followed here as described.

Changes: None.

Comments: Several commenters asserted that only two days of the negotiated rulemaking process were specifically devoted to a discussion of the proposed GE regulations, which they contended was not adequate time.

Discussion: The Department disagrees. There were multiple opportunities throughout the rulemaking process for people to submit comments on the proposed GE regulations. We held public hearings to obtain initial public input. We also included daily public comment periods during three weeks of negotiation sessions and devoted two days to discuss the topic exclusively. Non-Federal negotiators solicited feedback from their constituents on our proposals during and between negotiation sessions. Finally, we provided the

public with a 30-day period to comment on the NPRM.

Changes: None.

Comments: A few commenters believed that the Department is rushing the implementation of the GE regulations. These commenters argued that programs need more time to comply with these new rules.

Discussion: The Department disagrees with the commenters who believe that there is not adequate time to comply with the new GE regulations. The Department gave notice of its intent to regulate in the Spring 2021 Unified Agenda. We conducted hearings to obtain public input and held negotiated rulemaking sessions in the Spring of 2022 where the Department's distributed plans for the rule and provided detailed data on the projected outcomes of GE programs. Accordingly, we believe there has been, and will continue to be prior to the effective date, ample time for institutions to take the necessary steps to be able to meet their reporting obligations under the final rule. In addition, we note that the lengthy period beginning with the Spring 2021 Unified Agenda, taken together with the transition period built into the GE program accountability framework, will further allow institutions to take steps to improve their programs' outcomes after the regulation takes effect. Adding more time would further delay the effective date of the GE regulations and would unnecessarily increase the likelihood that students would continue to invest their time and money in postsecondary programs that do not meet the minimum standards of these regulations. The Department believes that we must implement these rules as quickly as possible to protect students and taxpayers, and that there is enough time for programs to comply.

Changes: None.

Statutory Authority; Other General Legal Support

Comments: Some commenters acknowledged that the Department has authority to implement the financial value transparency framework.

Discussion: We agree with these commenters that the Department has well established authority to implement the financial value transparency framework. As discussed in more detail under "Authority for this Regulatory Action" in this document, this framework is supported in principal part by the Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV of the

³⁸ 88 FR 32300, 32306 (May 19, 2023).

³⁹ 88 FR 32300, 32392 (May 19, 2023).

⁴⁰ 88 FR 32300, 32317 (May 19, 2023).

⁴¹ See 83 FR 40167, 40168 (Aug. 14, 2018).

HEA, as well as authorizations and directives within title IV of the HEA regarding the collection and dissemination of potentially useful information about higher education programs.

Comments: Several commenters asserted that the proposed GE program accountability framework exceeds the Department's statutory authority. Some commenters argued that the description of GE programs in the HEA—that those programs must prepare students for gainful employment in recognized occupations—does not provide clear congressional intent to support the eligibility requirements in the proposed regulations. Some of these commenters contended that the HEA does not require the Department to establish a mathematical framework to determine when a program adequately prepares students for gainful employment in a recognized occupation, nor provide any explicit congressional authorization to do so. Similarly, some commenters asserted that the GE provisions in the HEA are too vague and ambiguous to support an eligibility framework based on student outcomes. Some commenters said the litigation addressing prior GE rules never identified clear congressional authorization for the Department to establish an eligibility framework for GE programs. Commenters also asserted that the variations in the prior and proposed GE regulations constitute further proof that there is no clear congressional authorization tied to the proposed GE regulations. In addition, some commenters viewed the proposed GE program eligibility framework in its use of two outcome measures as a significant expansion of the prior GE regulations and argued that such a framework could only be supported with clear authorization from Congress.

Discussion: As discussed in detail in the NPRM⁴² and summarized in this document under “Authority for this Regulatory Action,” the GE program accountability framework is supported by the Department's statutory responsibilities to enforce eligibility limits in title IV of the HEA as well as the Department's generally applicable rulemaking authority.

As for the latter, Federal statutes grant the Secretary general crosscutting rulemaking authority that includes and extends beyond title IV of the HEA. Section 410 of the General Education Provisions Act (GEPA) provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the

manner of operations of, and governing the applicable programs administered by, the Department.⁴³ This authority includes the power to promulgate regulations relating to programs that we administer, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students. Furthermore, section 414 of the DEOA authorizes the Secretary to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.⁴⁴ These provisions, together with the provisions in the HEA regarding GE programs, authorize the Department to promulgate regulations that establish measures to determine the eligibility of GE programs for title IV, HEA program funds; require institutions to report information about GE programs to the Secretary; require institutions to provide information about GE programs to students, prospective students, and others; and establish certification requirements regarding an institution's GE programs.

As for title IV of the HEA and its eligibility requirements, institutions must meet institution-level as well as program-level eligibility requirements for students in those programs to receive title IV assistance in the form of loans or grants. HEA sections 101 and 102 state that one type of program for which certain categories of institutions must establish program-level eligibility is a “program of training to prepare students for gainful employment in a recognized occupation.”⁴⁵ HEA section 481 articulates this same requirement by defining, in part, an “eligible program” as a “program of training to prepare students for gainful employment in a recognized profession.”⁴⁶

The Department has increased its focus on these eligibility requirements over time as key circumstances have changed. College tuition levels have continued to rise relative to inflation, and student borrowing levels have reached very high levels. The earnings of college graduates have not risen apace, however, and earnings outcomes are not tightly correlated with borrowing levels. Moreover, cases of institutions using deceptive recruiting and advertising practices to lure students into postsecondary programs with little return on investment remain too common. All of these factors combine to strand many graduates with

unaffordable education debt and little enhancement to their earnings—too often leaving them worse off financially than if they had not pursued postsecondary education at all. While the financial returns to college remain high overall for the average student, in recent years these trends have contributed to increased skepticism about the value of going to college⁴⁷—threatening one of the key pathways to upward mobility in the United States.

We recognize that these forces are an issue across sectors. However, by defining GE programs as programs that prepare students for gainful employment, Congress indicated that the value of adding such programs to the Federal student loan program and to title IV of the HEA more broadly lies in their financial outcomes. Yet, despite that statutory focus, GE programs account for a disproportionate share of students who complete programs with very low earnings and unmanageable debt. An essentially transparency-only approach to GE programs, which is reflected in the 2019 Prior Rule, has not substantially improved the most troubling trends. To address both the Department's obligation to oversee that the statutory eligibility requirements are met and to address the specific need for regulatory action within the sector, the GE program accountability framework specifies what it means to prepare students for gainful employment in a recognized occupation. The framework does so by establishing clear and administrable measures that are tied to student financial outcomes and that the Department will use to evaluate whether a GE program is eligible for title IV, HEA program funds. One measure focuses on manageable debt (the D/E rates measure), the other on enhanced earnings (the EP measure).⁴⁸ We believe the D/E and EP measures, singly and taken together, will help promote the

⁴⁷ Several surveys have documented declines in the share of individuals who believe college is worth the cost. For example, see Education Expectations: Views on the Value of College and Likelihood to Enroll (June 15, 2022). Strada (<https://stradaeducation.org/report/pv-release-june-15-2022/>). Klebs, Shelbe, Fishman, Rachel, Nguyen, Sophie & Hiler, Tamara (2021). One Year Later: COVID-19s Impact on Current and Future College Students. Third Way (<https://www.thirdway.org/memo/one-year-later-covid-19s-impact-on-current-and-future-college-students>). See also Board of Governors of the Fed. Reserve Sys. (May 2022). Economic Well-Being of U.S. Households in 2021 (<https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>).

⁴⁸ For a detailed discussion of how the D/E rates measure and the EP measure assess whether a program is preparing students for gainful employment in a recognized occupation, see the *Gainful Employment Criteria* section in the NPRM, 88 FR 32300, 32343 (May 19, 2023).

⁴³ 20 U.S.C. 1221e–3.

⁴⁴ 20 U.S.C. 3474.

⁴⁵ 20 U.S.C. 1001(b)(1); 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A).

⁴⁶ 20 U.S.C. 1088(b).

⁴² 88 FR 32300, 32321–22 (May 19, 2023).

goal of career programs actually providing financial value to their graduates—consistent with the statutory definition of GE programs and in service of the specific need for regulatory action.

The GE accountability rules effectuate core statutory provisions in practical and administrable ways. The definitions of “gainful employment” programs are central to the statutory scheme regarding GE programs, and those provisions establish limits on the programs that may receive taxpayer support through title IV, HEA loans and grants to students in those programs. The measures adopted in the GE program eligibility framework are designed to ensure eligible programs leave students with affordable debt and enhanced earnings, consistent with the ordinary meaning of the operative words in the statute. It is not only reasonable but also in accord with all indications of Congress’s intent to conclude that a program does not prepare students for gainful employment in a recognized occupation if typical program graduates are left with unaffordable debt, or if they earn no more than comparable high school graduates.⁴⁹ Students in such programs receive no financial gain, and may even experience financial loss, as a result of attending their career training programs. Those results indicate failure, not success, as a title IV, HEA eligible GE program. To be sure, as shown Tables 4.8 and 4.9 in the RIA, the Department estimates that most of the existing GE programs serving the majority of GE students will not fail these metrics, let alone be ineligible for title IV, HEA participation by failing in two of three consecutive years for which results are issued. In any event, the programs that may lose title IV, HEA eligibility under these rules are the programs that perform especially poorly for students and, consequently, taxpayers.

Moreover, in past litigation involving affordable debt metrics, courts have accepted that reasonable performance measures may be used to evaluate the eligibility of GE programs for title IV,

HEA participation. Those courts based those decisions on the text, structure, and purposes of the relevant statutory provisions. Thus, in reviewing previous GE rules, courts have examined the GE provisions of the HEA and explained, for example, that “train” and “prepare” are terms that “suggest elevation to something more than just any paying job. They suggest jobs that students would less likely be able to obtain without that training and preparation.”⁵⁰ Courts have further concluded that “it is reasonable to consider students’ success in the job market as an indication of whether those students were, in fact, adequately prepared,”⁵¹ and that “examining [GE] programs’ outputs in terms of earnings and debts” is consistent with the HEA.⁵² Accordingly, the basic question of whether the HEA authorizes nonarbitrary GE performance measures has been resolved repeatedly in the Department’s favor. There are, of course, issues of detail to settle in formulating particular outcome measures that are clear, workable, and suited to their purposes. Indeed, questions of how exactly to specify the GE performance measures involve complex assessments of how best to evaluate whether programs prepare students for gainful employment, which the Department is statutorily authorized and well-positioned to resolve given the Department’s experience, knowledge, and expertise. The Department administers the relevant statutes, and it has used the negotiated rulemaking process to inform its views and gather and consider a broad range of perspectives before adopting these final rules. Importantly, the Department now has better data and data analysis than ever previously available.⁵³

⁵⁰ *Ass’n of Priv. Sector Colleges & Universities v. Duncan*, 640 F. App’x 5, 8 (D.C. Cir. 2016) (per curiam).

⁵¹ *Ass’n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 362 (S.D.N.Y. 2015) (internal quotation marks omitted) (quoting *Ass’n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 147–48 (D.D.C. 2012)).

⁵² *Ass’n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176, 187–88 (D.D.C. 2015) (emphasis omitted), *aff’d*, 640 F. App’x 5 (D.C. Cir. 2016) (per curiam); *id.* at 187 n.4 (explaining by way of analogy that there is “no irreconcilable conflict” between a concentration on “inputs” such as pre-match training and “outputs” in terms of match performance).

⁵³ See the RIA in this document for analyses of how the D/E rates metric and the earnings premium metric provide objective, data-driven assessments of whether GE programs are preparing their students for gainful employment in a recognized occupation or whether they are instead leaving their students with unmanageable debt or no better off than if they had not pursued a postsecondary credential. See also the discussion below of the earnings premium metric and reasons for its adoption, in light of

The foregoing points and discussion elsewhere in this document and the NPRM are sufficient to establish the Department’s authority to adopt the GE program eligibility framework. If additional support were needed, statutory history and legislative history confirm that program performance, including performance related to enhanced earnings and affordable debt, has been a focus of the relevant statutory provisions from the beginning. Such program performance was addressed in legislative history of the National Vocational Student Loan Insurance Act (NVSLIA), Public Law 89–287 (1965)—which is the statute that first permitted students to obtain federally financed loans to enroll in vocational programs. Both the ability of students to repay loans and the benefits to students from training were identified as principal issues during the development of that legislation.⁵⁴ Indeed, the Senate Report that accompanied the NVSLIA quoted extensively from testimony on behalf of the American Personnel and Guidance Association, which supported the legislation for the purpose of enabling students to ensure their financial security by “acquiring job skills which will allow them to enter and compete successfully in our increasingly complex occupational society,” while also emphasizing, based on an early study, that “sufficient numbers” of graduates of such programs “were working for sufficient wages to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.”⁵⁵

The statutory framework has not changed in relevant part, and the taxpayer interest in safeguarding the use of Federal funds persists today. Under the loan insurance program enacted in the NVSLIA, the specific potential loss to taxpayers of concern was the need to pay default claims to banks and other lenders if the borrowers defaulted on

recent developments and new evidence, in this final rule.

⁵⁴ See generally *Ass’n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 138–41 (D.D.C. 2012) (*APCU*) (reviewing statutory history and legislative history).

⁵⁵ S. Rep. No. 89–758 (1965), reprinted in 1965 U.S.C.C.A.N. 3742, 3748–49 (quoting testimony of Professor Dr. Kenneth B. Hoyt); *id.* at 3749 (further quoting Hoyt’s testimony as finding no reason to believe that making government funds available would be unjustified “in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk”); *id.* at 3744 (explaining that the testimony “confirmed the committee’s estimate of the need for such legislation”); *APCU*, 870 F. Supp. 2d at 139 (stating that both House and Senate subcommittees “placed considerable weight on Dr. Hoyt’s testimony”).

⁴⁹ Some commenters criticized the Department’s position in favor of performance measures for GE programs as focusing overly much on the two words, “gainful employment.” In our view, that criticism understates the depth of analysis and breadth of considerations that support the Department’s position—including our attention to the GE provisions as a whole as well as the structure of the Higher Education Act more broadly. This criticism also undervalues the enacted text, however many or few words are relevant to the issue of GE performance measures. We are unpersuaded by arguments that appear to place little value, and consequently no serious limits, on the terms of the gainful employment provisions in the statute.

the loans. After its passage, the NVSLIA was merged into the HEA which, in title IV, part B, has both a direct Federal loan insurance component and a Federal reinsurance component that require the Federal Government to reimburse State and private nonprofit loan guaranty agencies upon their payment of default claims.⁵⁶ Under either HEA component, taxpayers and the Government assume the direct financial risk of default.⁵⁷ Since the Health Care and Reconciliation Act of 2010,⁵⁸ all Federal loans have been originated as Direct Loans from the Federal Government. As the originator and owner of Federal loans, the Federal Government (funded by taxpayers) bears the cost of any unpaid loans. Costs are generated by borrowers defaulting on their loans, but increasingly costs are also generated by borrowers electing to repay their loans on income driven repayment (IDR) plans. Under these plans, borrowers can pay a fixed share of the portion of their income exceeding a threshold level (*i.e.*, their discretionary income) for a preset period of time, and then have the remaining balance forgiven. When borrowers' debts are high relative to their income, they are more likely to not fully repay their loans. To avoid adverse repayment risks both from default or loan forgiveness via IDR plans, taxpayers have an interest in financing career training programs that leave students better off in terms of earnings, and with debt in reasonable proportion to their earnings. Participation in IDR plans has increased by approximately 50 percent since 2016 to about 9 million borrowers and is likely to increase more with the introduction of the new and more generous Saving on a Valuable Education (SAVE) IDR plan. Accordingly, the Department has a significant interest, on behalf of taxpayers, in ensuring the funds disbursed through title IV, HEA loans are invested responsibly, further supporting the use of performance measures to assess a program's eligibility to participate in the title IV, HEA programs as a GE program.

With regard to the earnings premium measure, we offer further discussion below. We note here that, to receive title IV funds, section 484 of the HEA generally requires that students already have a high school diploma or recognized equivalent. That requirement makes high-school-level achievement the presumptive starting point for title

IV, HEA funds. The EP measure adopts that statutory starting point by comparing the earnings of typical program completers with those of comparable high school graduates. As with the debt-to-earnings measure, the earnings premium measure is consistent with the text, structure, and purposes of the statute.

We disagree with the commenters who contended that the differences between the 2014 Prior Rule and the GE program accountability framework in these regulations suggest a lack of statutory authority. In the NPRM, we discussed the background of the regulations,⁵⁹ the relevant data available,⁶⁰ and the major changes proposed in that document,⁶¹ including the changes from the 2014 Prior Rule and the 2019 Prior Rule. Although the GE program accountability framework in this final rule differs from the 2014 Prior Rule, including in the addition of a standalone earnings premium measure, we have demonstrated how the D/E rates measure and the EP measure, singly and taken together, are reasonable, evidence-based metrics that both serve to meet the statutory eligibility requirements and address the specific need for regulatory action in the sector. The fact that this final rule varies from prior GE regulations is not indicative of lack of authority for the Department to implement the statutory provisions related to GE programs and to develop rules to properly administer the title IV, HEA programs. Rather, the development of this rule reflects the reality that the Department's judgments and policies on a variety of issues may change over time in light of experience, information, and analysis—which the law permits, as long as the Department's rules remain within the boundaries of the applicable statutes and the Department provides a reasoned basis for the change in position.⁶²

The Department, therefore, disagrees with commenters who believe that the GE program accountability framework is not within the Department's statutory authority, and further disagrees with claims that GE program results are not relevant to GE program eligibility for title IV, HEA funding. The Department also disagrees with suggestions that we should implement the statute without clear and administrable rules for evaluating whether GE programs are meeting statutory eligibility requirements. Without relatively

specific rules, the Department could not adequately ensure that title IV, HEA funds are properly channeled to students attending programs that prepare students for gainful employment; institutions would not have clarity as to the standards for GE programs that the Department applies; and we would not be able to address the need for regulatory action in the sector.⁶³

We note, finally, that all or nearly all of the commenters' arguments against any GE performance measure have been raised and rejected during previous rulemaking efforts and in litigation over previous versions of the Department's GE program accountability rules. The statutory arguments against considering GE program outcomes of any kind are not more persuasive now than they were in past years. In fact, new data, data analysis, and the Department's experience in attempting to enforce the statutory limits on GE programs have convinced us that these performance measures are more, not less, urgently needed.

Changes: None.

Comments: Some commenters questioned the Department's authority, at least at this time, to adopt performance measures for GE program eligibility including the earnings premium (EP) measure. Some commenters noted that the EP measure is a new standard and argued that the measure was beyond the Department's authority to adopt for evaluating the eligibility of GE programs to participate in title IV, HEA. Some commenters asserted that the Department had not adequately supported the EP measure in the NPRM, or that the Department's

⁶³ In suggesting that congressional intent regarding GE programs indicates relatively narrow authority for the Department, a commenter pointed to post-enactment statements by Members of Congress as well as unsuccessful legislation. The Department is attentive to input from Members of Congress, but we disagree that the statutory authority for these rules is limited by unenacted bills or policy positions. To the extent that the 2019 Prior Rule can somehow be read to adopt a contrary position, that position cannot be sustained. See, for example, *Bostock v. Clayton County*, 140 S. Ct. 1731, 1747 (2020) ("All we can know for certain is that speculation about why a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.") (quoting *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990)). In this rulemaking, we have emphasized, among other sources, statutory text, structure, purpose, and past judicial decisions, as well as the Department's well-reasoned choices on matters of detail in the exercise of its authority to administer the relevant statutes and in light of the Department's experience and expertise. Nothing in the 2019 Prior Rule, and its more limited review of the foregoing considerations, prevents the Department from engaging in this analysis and reaching the conclusions set forth herein.

⁵⁶ 20 U.S.C. 1071(a)(1).

⁵⁷ 20 U.S.C. 1078(c) (Federal reinsurance for default claim payments); 20 U.S.C. 1080 (Federal insurance for default claims).

⁵⁸ Public Law 111–152.

⁵⁹ 88 FR 32300, 32306 (May 19, 2023).

⁶⁰ 88 FR 32300, 32392 (May 19, 2023).

⁶¹ 88 FR 32300, 32317 (May 19, 2023).

⁶² See, for example, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

support for the EP measure is arbitrary. While many commentators did not focus on the EP measure in terms of the Department's statutory authority, some commentators did make general challenges to the GE program accountability framework that applied to the EP measure as well as the debt-to-earnings (D/E) rates. Some of those challenges were based on the commentators' interpretation of "gainful employment" in the GE statutory provisions to mean any job that pays any amount, and on the contention that the Department is arbitrarily changing its position from the 2019 Prior Rule.

Discussion: In several respects, this final rule differs from the 2019 Prior Rule as well as the 2014 Prior Rule. We have acknowledged those differences and offered reasons for them in this document and in the NPRM.⁶⁴ One difference is the addition of an earnings premium measure, which will operate alongside the debt-to-earnings rates measure in evaluating GE program eligibility. Further details and reasons for adopting the EP measure are presented below and in the NPRM.⁶⁵ In this discussion, we summarize several connected reasons for adopting the EP measure for GE program eligibility in these final rules.

First of all, the Department's careful review of applicable law and public comments leave us convinced that the EP measure is within the Department's statutory authority. Statutory text, structure, and purpose support that conclusion. If program completers' earnings fall below those of students who never pursue postsecondary education in the first place, programs cannot fairly be said to "train" postsecondary students to "prepare" them for "gainful employment" in recognized professions or occupations.⁶⁶ Those statutory terms indicate that eligible GE programs must make students ready or able to achieve gainful employment in such professions or occupations—consistent with a statutory purpose of improving students' ultimate job prospects and income over what they would be in the absence of such training and preparation. As the D.C. Circuit stated when it reviewed the D/E measure in the 2014 Prior Rule, those statutory

terms "suggest elevation to something more than just any paying job. They suggest jobs that students would less likely be able to obtain without that training and preparation."⁶⁷ At minimum, the statutory language permits the conclusion that the Department adopts here.

Importantly, the overall structure of the applicable statutes reinforces our adoption of the EP measure. The basic starting point for students at eligible GE programs is a high school education or its equivalent, as we pointed out in the NPRM.⁶⁸ The HEA generally requires students who receive title IV assistance to have already completed a high school education,⁶⁹ and then, from that starting point, the statute requires GE programs to prepare those high school graduates for gainful employment in a recognized occupation. Whatever ambiguity or vagueness there might be in the HEA, clearly GE programs are supposed to enhance earnings power beyond that of what high school graduates, not leave them where they started. The EP measure reflects that premise of the applicable statutes. It will measure post-high school gain, in part, with an administrable test that reflects earnings beyond a typical high school graduate.

The discussions in this document and in the NPRM are more than sufficient to

establish the Department's authority to adopt the GE eligibility rules, including the EP measure.

The Department recognizes again, as we did in the NPRM,⁷⁰ that the EP measure will be new to the Department's regulations. More broadly, we recognize that until 2010 the Department did not specify through regulations an administrable test to identify which programs qualify as eligible GE programs under the statutes. Nevertheless, we do not believe that the meaning of the applicable statutes becomes narrower because the agency initially refrained from issuing regulations that incorporated specific performance tests. The need for such rules became clearer over time. In addition to the points made above, new data and analyses have underscored the need for performance-based limits on GE program eligibility, including a test for enhanced student earnings. Acting now will enable the Department to respond to that emerging need with administrable tests of program performance that accord with statutory text, structure, and purpose.

An EP measure for GE eligibility finds support in recent evidence and studies. Within the last several years, a number of researchers have recommended that the Department reinstate the 2014 GE rule with an added layer of accountability through a high school earnings metric.⁷¹ That goal of ensuring that students benefit financially from their career training fits with broader research on the economics of postsecondary education. Similar earnings premium metrics are used ubiquitously by economists and other analysts to measure the earnings gains associated with college credentials relative to a high school education.⁷²

⁶⁴ See 88 FR 32300, 32307–08 (May 19, 2023); *id.*

⁶⁴ See 88 FR 32300, 32307–08 (May 19, 2023); *id.* at 32309–11, 32342–43 (providing reasons for the adoption of GE accountability rules at this time, in view of the 2019 Prior Rule and subsequent developments).

⁶⁵ See, for example, 88 FR 32300, 32308, 32325–28, 32343–44 (May 19, 2023). Those discussions also address the D/E rates measure.

⁶⁶ 20 U.S.C. 1002(b)(1)(A), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)(A)(i), which refers to a recognized profession.

⁶⁷ *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 640 F. App'x 5, 8 (D.C. Cir. 2016) (per curiam). Although the courts were likewise reviewing D/E measures for GE program eligibility rather than EP measures, generally supportive language also appears in *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176, 187–88 (D.D.C. 2015) (stating that "examining [GE] programs' outputs in terms of earnings and debts" is consistent with the HEA) (emphasis omitted), *aff'd*, 640 F. App'x at 6; *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 362 (S.D.N.Y. 2015) (concluding that "it is reasonable to consider students' success in the job market as an indication of whether those students were, in fact, adequately prepared") (internal quotation marks omitted) (quoting *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 147–48 (D.D.C. 2012)).

⁶⁸ See, for example, 88 FR 32300, 32308, 32333, 32327 (May 19, 2023).

⁶⁹ Regarding a high school education as the starting point, 20 U.S.C. 1001 states that an institution of higher education must only admit as regular students those individuals who have completed their secondary education or met specific requirements under 20 U.S.C. 1091(d), which includes an assessment that they demonstrate the ability to benefit from the postsecondary program being offered. The definitions for a proprietary institution of higher education or a postsecondary vocational institution in 20 U.S.C. 1002 maintain the same requirement for admitting individuals who have completed secondary education. Similarly, there are only narrow exceptions for students beyond the age of compulsory attendance who are dually or concurrently enrolled in postsecondary and secondary education. The apparent purpose of such limitations is to help promote that postsecondary programs build skills and knowledge that extend beyond what is taught in high school.

⁷⁰ See 88 FR 32300, 32307–11 (May 19, 2023).

⁷¹ See, for example, Matsudaira, Jordan D. & Turner, Lesley J. (2020). Towards a Framework for Accountability for Federal Financial Assistance Programs in Postsecondary Education. The Brookings Institution (www.brookings.edu/wp-content/uploads/2020/11/20210603-Mats-Turner.pdf). Cellini, Stephanie R. & Blanchard, Kathryn J. (2022). Using a High School Earnings Benchmark to Measure College Student Success Implications for Accountability and Equity. The Postsecondary Equity and Economics Research Project. (www.peerresearchproject.org/peer/research/body/2022.3.3PER_HSEarnings-Updated.pdf). Itzkowitz, Michael (2020). Price to Earnings Premium: A New Way of Measuring Return on Investment in Higher Education. Third Way (<https://www.thirdway.org/report/price-to-earnings-premium-a-new-way-of-measuring-return-on-investment-in-higher-ed>). For further discussion of such research, see the Regulatory Impact Analysis below.

⁷² See, for example, Autor, D.H. (2014). Skills, Education, and the Rise of Earnings Inequality Among the "Other 99 Percent." *Science*, 344(6186), 843–851. Baum, S. (2014). Higher Education Earnings Premium: Value, Variation, and Trends.

Furthermore, there is increasing public recognition that some higher education programs are not “worth it” and do not promote economic mobility.⁷³ While the D/E rates measure identifies programs where debt is high relative to earnings, the EP measure assesses the economic boost a program provides to its students independent of the debt incurred. After all, students and families invest their own time and money in postsecondary education in addition to the amount they borrow. The EP measure therefore provides a different measure than the D/E metric of whether a program prepares its students for gainful employment in a recognized occupation. Adopting an EP measure for GE programs that seek to participate in title IV, HEA fits within such recent recommendations, data analysis, and mainstream thinking about which career training programs should be considered gainful.

Furthermore, the EP measure that we adopt will set only minimal and reasonable expectations for programs that are supposed to help students move beyond a high school baseline. The rule marks an incremental and commonsense change that we are confident is within the Department’s authority. In particular, we observe that the median earnings of high school graduates is about \$25,000 nationally, which corresponds to the earnings of a full-time worker who makes about \$12.50 per hour.⁷⁴ We also reiterate that the EP measure does not demand that every individual who attends a GE program must earn more than a high school graduate; instead, the measure requires only that at least half of those who actually complete the program are earning at least slightly more than individuals who had never completed

postsecondary education.⁷⁵ The vast majority of students cite the opportunity for a good job or higher earnings as a key, if not the most important, reason they chose to pursue a college degree.⁷⁶ While the 2014 Prior Rule justifiably emphasized that borrowers should be able to earn enough to afford to repay their debts, the Department recognizes here that borrowers must be able to afford more than “just” their loan payments and that postsecondary GE programs should help students reach a minimal level of labor market earnings.

Although modest in several respects, the EP measure for GE program eligibility is nonetheless likely to deliver important benefits and substantially further statutory purposes. We are convinced of these prospective gains by recent evidence. For example, recent research indicates that the EP measure will help protect students from the adverse borrowing outcomes prevalent among programs with very low earnings. Research conducted since the 2014 Prior Rule as well as new data analyses shown in this RIA illustrate that, for borrowers with low earnings, even small amounts of debt—including levels of debt that would not trigger failure of the D/E rates—can be unmanageable. We now can be reasonably confident that default rates tend to be especially high among borrowers with lower debt levels and very low earnings, because at low earnings levels any amount of debt in unaffordable.⁷⁷ Analyses in this RIA show that the default rate among students in programs that pass the D/E rates thresholds but fail the earnings premium are very high. In fact, those default rates are even higher than programs that fail the D/E rates measure but pass the EP measure. In that sense, the EP measure is an important separate measure of gainfulness, providing some added protection to borrowers who have

relatively low balances, but who have earnings so low that even low levels of debt payments are unaffordable.

In addition, we reaffirm that the EP measure will help protect taxpayers.⁷⁸ Borrowers with low earnings are eligible for reduced loan payments and loan forgiveness, which increase the costs of the title IV, HEA loan program to taxpayers. While income-driven repayment (IDR) plans for Federal student loans partially shield borrowers from default due to inability to make payments, such after-the-fact protections do not address underlying program failures to prepare students for gainful employment in the first place, and they exacerbate the impact of such failures on taxpayers as a whole when borrowers are unable to pay. Not all borrowers participate in these repayment plans and, where they do, the risks of nonpayment are shifted to taxpayers when borrowers’ payments are not sufficient to fully pay back their loans. This is true because borrowers with persistently low incomes who enroll in IDR—and thereby make payments based on a share of their income that can be as low as \$0—will have their remaining balances forgiven at taxpayer expense after a specified number of years in repayment. Both the EP and D/E measures for GE program eligibility will help protect taxpayers, because both measures are well-designed to screen out GE programs that generate a disproportionate share of the costs to taxpayers and negative borrower outcomes. In support of this conclusion, the final RIA as well as the NPRM’s RIA presented estimates of loan repayment under the hypothetical assumption that all borrowers pay on the SAVE plan announced by the Department in July 2023.⁷⁹ These analyses show that both D/E and EP measures are strongly correlated with an estimated subsidy rate on Federal loans, which measures the share of a disbursed loan that will not be repaid, and thus provides a proxy for the cost of loans to taxpayers.⁸⁰ Although many commenters disagreed with at least part of the Department’s approach to GE programs, commenters did not appear to take issue with the proposition that taxpayer protection is a purpose to be served by the GE provisions in the HEA.

Thus, the EP and D/E measures serve some of the same purposes, but we observe again that they measure importantly distinct dimensions of

Urban Institute. Carnevale, A.P., Cheah, B. & Rose, S.J. (2011). The College Pay Off. Daly, M.C. & Bengali, L. (2014). Is It Still Worth Going to College. *FRBSF Economic Letter*, 13(2014), 1–5. Li, A., Wallace, M. & Hyde, A. (2019). Degrees of Inequality: The Great Recession and the College Earnings Premium in US Metropolitan Areas. *Social Science Research*, 84, 102342; Oreopoulos, P. & Petronijevic, U. (2013). Making College Worth It: A Review of Research on the Returns to Higher Education. *NBER Working Papers*, (19053); and Broady, Kristen E. & Herschbein, Brad (2020). Major Decisions: What Graduates Earn Over Their Lifetimes. The Hamilton Project.

⁷³ See, for example, polling evidence in <https://www.wsj.com/articles/americans-are-losing-faith-in-college-education-wsj-norc-poll-finds-3a836ce1>. A 2022 survey by the Federal Reserve shows that more than one-third of workers under the age of 45 say the benefits of their education did not exceed the costs (<https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf>).

⁷⁴ That figure is lower than the minimum wage in 15 States. See <https://www.dol.gov/agencies/whd/mw-consolidated>.

⁷⁵ See 88 FR 32300, 32333, 32327 (May 19, 2023). The EP measure simply compares program completers’ earnings with high school graduates’ earnings and therefore does not reflect tuition costs or debt. See *id.* at 32327. Note that these EP features are not unique to the GE program eligibility provisions. These EP features apply within the financial value transparency provisions as well.

⁷⁶ For example, a recent survey of 2,000 persons aged 16 to 19 and 2,000 recent college graduates aged 22 to 30 rated affordable tuition, higher income potential, and lower student debt as the top 3 to 4 most important factors in choosing a college (<https://www.nytimes.com/2023/03/27/opinion/problem-college-rankings.html>). The RIA includes citations of other survey results with similar findings.

⁷⁷ See Brown, Meta *et al.* (2015). Looking at Student Loan Defaults Through a Larger Window. Liberty Street Economics, Fed. Reserve Bank of N.Y. (https://libertystreeteconomics.newyorkfed.org/2015/02/looking_at_student_loan_defaults_through_a_larger_window/).

⁷⁸ See, for example, 88 FR 32300, 32307–09 (May 19, 2023).

⁷⁹ See 88 FR 1894 (Jan. 11, 2023). The Department’s final rule for IDR can be found at 88 FR 43820 (July 10, 2023).

⁸⁰ See Table 2.10 in the RIA for this document.

gainful employment.⁸¹ The distinctions support the Department's decision to require that GE programs not (repeatedly) fail either measure if those programs are to receive title IV, HEA support. D/E rates measure debt-affordability, indicating whether the typical graduate will have earnings enough to manage their debt service payments without incurring undue hardship. For any median earnings level of a program, the D/E rates and thresholds imply a maximum level of total borrowing beyond which students should be concerned that they may not be able to successfully manage their debt. The EP measure tests whether programs leave their completers with greater earnings capacity than those who do not enroll in postsecondary education, which represents a minimal benchmark that students pursuing postsecondary credentials likely expect to achieve. And while the EP measure provides additional protection to borrowers and taxpayers, it attends to a distinct aspect of determining whether a program prepares its students for gainful employment in a recognized occupation—namely, the extent to which the program helps students attain a minimally acceptable earnings enhancement.

Accordingly, we disagree with commenters who argue that the Department either generally lacks authority to adopt the EP measure for GE program eligibility, or that the Department chose the wrong time to adopt that measure. We understand the opinions of those who prefer that the Department not adopt administrable and clear rules to test GE program performance. Unlike the rules as they stood after the 2019 rescission, these final rules will demand that GE programs not have a track record of failure on certain basic measures of performance if they seek to benefit from title IV, HEA taxpayer funds. Some GE programs will repeatedly fail those measures, although we point out that some of those programs will survive without support from the Federal Government through title IV, HEA. Regardless, we are convinced that these rules are within the Department's statutory authority, and that recent events and new information confirm the importance of acting now. If the Department does not act effectively at

the front end to screen out the subset of GE programs that do not meet minimal performance standards of enhanced earnings and affordable debt, students and taxpayers will continue to suffer the consequences at the back end. Those consequences have grown larger and clearer, and the Department has decided to respond decisively yet reasonably. A clear earnings premium rule for GE program eligibility is one part of that measured response.

Comments: Several commenters contended that there is an increased burden on the Department to demonstrate congressional authorization for its proposed GE metrics under *West Virginia v. Environmental Protection Agency*⁸² and the major questions doctrine. These commenters described the proposed eligibility framework as a major shift in the way GE programs maintain title IV, HEA eligibility that would impact the funding for many students and institutions, and asserted that the framework creates burdensome new reporting requirements. These commenters concluded that the statutory language relied upon—that GE programs “prepare students for gainful employment in a recognized occupation”—is not a sufficiently explicit statement of congressional intent to support such a change.

Discussion: We disagree that the major questions doctrine applies such that the Department needs an especially clear grant of statutory authority to adopt performance standards in the GE program accountability framework. Having considered the factors that courts have used to identify exceptional circumstances in which such clarity is required, we do not believe that the doctrine applies here.⁸³ If the doctrine did apply, we believe that the Department's authority to adopt performance standards for GE program eligibility is adequately clear based on ordinary tools of statutory interpretation.

As discussed above and in the NPRM,⁸⁴ we believe performance measures for GE accountability rules are firmly grounded in the text, structure, and purposes of title IV, HEA, including its gainful employment provisions. Furthermore, and for reasons also discussed above, GE performance measures are neither novel nor surprising. We have noted past litigation

and court opinions.⁸⁵ And given the grounding of performance measures in the text of core statutory provisions in the HEA regarding GE programs, there is nothing “ancillary” about those statutory provisions such that the major questions doctrine might apply on that basis.⁸⁶

And far from taking any step toward mandating specific curricula when institutions prefer other educational strategies,⁸⁷ these performance measures simply evaluate whether programs should receive taxpayer support based on commonsense financial outcomes: affordable debt and enhanced earnings. Those outcomes plainly are related to whether a program actually prepares students for gainful employment in a recognized occupation or profession, instead of leaving the typical program completer with unaffordable debt burdens or no greater earnings than they could secure without career training. These performance measures are based on the text, structure, and purposes of the governing statutes. Such rules are, moreover, within the heartland of the Department's experience and expertise. Among the Department's longstanding missions are enforcing the limits on title IV, HEA eligibility for GE programs, and gathering, analyzing, and using data to evaluate education programs including GE programs. Accordingly, GE performance measures are not beyond the agency's core competence such that the major questions doctrine might apply on that basis.⁸⁸

⁸⁵ See cases cited in notes 50–52 above, within that earlier discussion of authority for the GE program accountability framework.

⁸⁶ Compare *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”); *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 148 (D.D.C. 2012) (*APCU*) (reviewing the 2011 Prior GE Rule, distinguishing *Whitman*, and explaining that “[n]either the elephant nor the mousehole is present here. . . . Concerned about inadequate programs and unscrupulous institutions, the Department has gone looking for rats in ratholes—as the statute empowers it to do.”); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 361 (S.D.N.Y. 2015) (reviewing the 2014 Prior GE Rule and quoting *APCU*).

⁸⁷ Under section 103 of the Department of Education Organization Act, 20 U.S.C. 3403(b), the Department is generally prohibited from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of an educational institution, school, or school system.

⁸⁸ Compare *W. Virginia v. EPA*, 142 S. Ct. at 2612–13 (indicating that presumably Congress does not task an agency with making policy judgments in which the agency has “no comparative expertise”); *Biden v. Missouri*, 142 S. Ct. 647, 653 (2022) (“[T]here can be no doubt that addressing infection problems in Medicare and Medicaid

⁸¹ See, for example, 88 FR 32300, 32308, 32327, 32344 (May 19, 2023). We reiterate that the D/E and EP measures are severable. The severability provisions in these final rules are §§ 668.409 and 668.606. For the Department's discussions of severability generally and as applied to the D/E and EP measures, please see the NPRM, 88 FR 32300, 32341–42, 32349 (May 19, 2023).

⁸² 142 S. Ct. 2587 (2022).

⁸³ See, for example, *id.* at 2608 (discussing extraordinary cases in which the breadth, history, and economic and political significance of asserted agency authority provide reason to hesitate before concluding that Congress conferred such authority).

⁸⁴ 88 FR 32300, 32306 (May 19, 2023).

In addition, available data indicate that the GE program accountability framework will have important yet limited effects. The available data, presented in RIA Tables 4.8 and 4.9, indicate that most existing GE programs will not fail the D/E rates or EP measure when they are applied, let alone fail two out of three years for which program results are issued. Our estimates suggest about 1,700 GE programs will fail the D/E rates or EP measure—representing about 5.3 percent of all GE programs, and only 1.1 percent of all higher education programs attended by federally aided students. While the share of students currently enrolled in such programs is higher—23.7 percent of federally aided students in career training programs, and 3.6 percent of all federally aided students—it is important to note these students have other options. Analyses presented in Tables 4.25 and 4.26 of the RIA show that the majority of students have similar program options that do not fail the D/E rates or EP measure and are nearby, or even at the same institution. These analyses are supported by external research, suggesting that most students in institutions closed by accountability provisions successfully reenroll in higher performing colleges.⁸⁹ More generally, many more students will pursue a postsecondary education in the future, relative to the number enrolled now. As programs with poor performance close, these future college goers will benefit from better options to choose from and are unlikely to otherwise be affected by programs closed today. In any event, nearly three-quarters of institutions of higher education that participate in title IV, HEA programs have no enrollment in failing GE programs that might be subject to eligibility loss.

Those predicted effects do not establish the kind of transformation or upheaval in higher education that might trigger the major questions doctrine.⁹⁰ Indeed none of the above considerations indicates the special circumstances under which courts have invoked the

major questions doctrine to demand especially clear statutory authorization for agency action.

Of course, the GE program accountability framework is not irrelevant as a matter of economics or politics. Every student who ends up with enhanced earnings or more affordable debt is important, in the Department's view, as is every Federal dollar saved from expenditure on poorly performing GE programs. And we acknowledge that there is disagreement among those who are engaged in the relevant policy debates about the appropriate content for the GE rules. We likewise acknowledge that the precise content of the GE rules and their effects are important to institutions, students, and taxpayers. In fact, the HEA requires that limits on GE programs be recognized and enforced; the Department is not free to ignore those limits as if the applicable sections were surplusage, and that point is not insignificant to the statutory scheme. But in this instance, the Department is adopting relatively modest, commonsense, minimum performance standards that most GE programs seeking government support can and should pass without trouble, and that do not preempt, through agency action, any widespread political controversy that Congress intended to reserve for itself. Although the Department must make judgments about the details of performance measures to make the rules clear and easily administrable, those choices of detail are, by definition, not subject to the major questions doctrine.

We also observe that the Department has followed and benefitted from an extensive process before issuing these final rules on GE accountability. The Department used the negotiated rulemaking provisions in the HEA, with notice and comment rulemaking, which is the process that was created for the Department to consider the interests of title IV, HEA participants, among others. In this context, reestablishing an eligibility framework for GE programs fits well with the financial value transparency framework for all programs while setting an outcome-based limit for GE programs.

Changes: None.

Comments: Some commenters contended that a lack of congressional authorization to use outcomes-based measures for GE programs is shown by other eligibility requirements in the HEA, including cohort default rates, the 90/10 revenue requirement, and limitations on correspondence courses. A commenter also asserted that Congress created cohort default rates (CDRs) as a performance measure for

institutions rather than directing the Department to set program-based outcomes as eligibility requirements. Some commenters argued that the framework of detailed program requirements under title IV of the HEA, including institutional CDR, institutional disclosure requirements, restrictions on student loan borrowing, and other financial aid requirements, prevents the Department from adopting debt measures to determine whether a GE program is eligible to receive title IV, HEA program funds.

Discussion: The Department disagrees that GE performance measures are somehow precluded by distinct and complementary safeguards elsewhere in law. There is no express support in the statutes for that position, which would diminish protections for students and taxpayers. Instead, the commenters are suggesting an inference of exclusivity with inadequate support in the statutes. Taking other safeguards as exclusive would effectively ignore the statutorily prescribed limits on GE programs as the HEA defines them. The Department can find no sound reason, in law or policy, for treating the GE provisions as surplusage. The Department's specification of details in clear and administrable rules helps us to implement and enforce these provisions appropriately, and the specific rules for these GE provisions are entirely consistent with the specific requirements in other statutory provisions.

The Department accordingly disagrees with the commenters' assertions that the HEA's provisions on CDR, student borrowing, and other financial aid matters prevent the Department from implementing the specific HEA provision limiting title IV eligibility to programs that provide training that prepares students for gainful employment in a recognized occupation. The different Department rules implement different statutory provisions. For example, the CDR and GE regulations serve related but different purposes. Congress enacted the CDR provision, which measures loan defaults from all programs at the institutional level, as one mechanism—not the sole, exclusive mechanism—for dealing with abuses in Federal student aid programs.⁹¹ Congress did not, in

facilities is what [the Secretary of Health and Human Services] does.”).

⁸⁹ Cellini, S.R., Darlie, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy*, 12(2): 46–83.

⁹⁰ Compare *W. Virginia v. EPA*, 142 S. Ct. at 2610 (addressing what the Court characterized as agency authority to “substantially restructure the American energy market,” and an “unheralded power” that would represent a “transformative expansion” of agency authority) (internal quotation marks omitted); *Biden v. Nebraska*, 143 S. Ct. 2355, 2373 (2023) (discussing what the Court described as a “fundamental revision of the statute” and a decision with “staggering” economic and political significance).

⁹¹ That conclusion regarding the non-exclusivity of CDR is consistent with relevant legislative history. See H.R. Rep. No. 110–500, at 261 (2007) (“Over the years, a number of provisions have been enacted under the HEA to protect the integrity of the federal student aid programs. One effective mechanism was to restrict federal loan eligibility for students at schools with very high cohort loan default rates.”) (emphasis added).

enacting the CDR provision or at any other time, limit the Department's authority to promulgate regulations to effectuate and specify limits on GE programs.⁹² Nor did Congress alter the existing statutory language regarding GE program eligibility when it passed the CDR provision. Moreover, the CDR provision operates at the institutional level while the GE provisions and these GE accountability rules operate at the program level. In addition to statutory eligibility requirements at the institution level, each program must be evaluated for title IV, HEA eligibility as well.⁹³

The GE program accountability rules are also consistent with other provisions of the HEA aimed at curbing abuses in the title IV, HEA programs. For example, Congress capped the amount of title IV revenues that proprietary institutions could receive at 85 percent in the 1992 HEA reauthorization as a condition of institutional eligibility, with subsequent changes that increased the percentage to 90 percent and that tied a loss of eligibility to two years of failing the 90 percent measure instead of one year. More recently, Congress also expanded the definition of Federal education funds to include military benefits to service members and families as a part of the funds included in the 90 percent limit. The 90/10 provisions were put in place to require proprietary institutions to generate some revenue from non-Federal sources. Those changes fit within a larger framework where Congress also specified that a participating "institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance."⁹⁴ Additionally, to prevent

schools from improperly inducing people to enroll, Congress prohibited participating institutions from engaging in a "substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates."⁹⁵ Congress also required a minimum level of State oversight of eligible schools. The GE program accountability rules adopted here are consistent and compatible with such additional and separate regulations, including those that apply to institutions that seek eligibility for title IV, HEA support.

Changes: None.

Comments: Some commenters asserted that the Department is misinterpreting the GE program statutory language and suggested that the language is better read as referring to the type and content of the program an institution is offering rather than measuring any outcomes of the program graduates. Other commenters similarly stated that "gainful employment" was intended to refer to the nature of the employment associated with the training and not any type of outcome-based framework, noting that outcome-based standards provide no basis for new programs to establish eligibility under the HEA before there would be any program outcomes to measure. Another commenter referred to administrative decisions from the Department that also described GE programs as types of programs leading to recognized occupations. One commenter claimed that the Department has previously defined the phrase "gainful employment in a recognized occupation" in the context of conducting administrative hearings and argued that the Department did not adequately explain in the NPRM why it was departing from its prior use of the term.

Discussion: The GE program accountability framework builds on the Department's regulation of institutions participating in the title IV, HEA programs to protect students and taxpayers, as Congress authorized. For reasons given in this document and the NPRM,⁹⁶ the Department is adopting GE rules that consider program performance in eligibility determinations for GE programs. The Department disagrees with the commenters' claims that the GE

tempted to sign up poorly qualified students who will derive little benefit from the subsidy and may be unable or unwilling to repay federally guaranteed loans." *United States ex rel. Main v. Oakland City Univ.*, 426 F.3d 914, 916 (7th Cir. 2005).

⁹⁵ 20 U.S.C. 1094(c)(3)(A).

⁹⁶ 88 FR 32300, 32344 (May 19, 2023).

provisions address program content and curriculum alone. Whatever the extent of the Department's authority to consider GE program content—and the Department is not asserting such authority in these GE rules—the Department may assess GE program performance through student outcomes.

Furthermore, the rules adopted here allow for new as well as existing GE programs. Although parts of the GE rules are performance-based, these rules will not exclude programs from title IV, HEA eligibility until they build a track record to evaluate them. The Department must have student outcomes data to measure program performance, which can only come after a period of time. Moreover, the rules are designed as reasonable, minimum standards whereby title IV, HEA eligibility as a GE program is not precluded until a program fails one of the two GE metrics in two out of three consecutive years for which the Department can issue results. Under these rules, new programs that otherwise qualify as GE programs do not have to show performance results that are not yet available.

We further disagree that a previous administrative decision on GE program eligibility forecloses the adoption of these final rules. The Department would not be prevented from changing its position in this rulemaking, of course, even if an older agency decision during an administrative adjudication conflicted with our decision here. We provide numerous and extensive reasons for the rules that we are adopting. But in this instance, no such conflict exists. The argument was vetted and rejected more than 10 years ago. Challenging the 2011 Prior Rule and referring to a decision by an administrative law judge (ALJ), the Association of Private Colleges and Universities contended that the Department previously defined gainful employment in a recognized occupation in a manner that conflicted with those outcome-based rules. The adjudication involved the question whether a program in Jewish culture prepared students enrolled in the program for gainful employment in a recognized occupation. As the court understood, the ALJ did not purport to comprehensively decide what it means to prepare a student for gainful employment in a recognized occupation; instead the ALJ merely stated that any preparation must be for a specific area of employment.⁹⁷

⁹⁷ *Association of Private Sector Colleges and Universities (APSCU) v. Duncan*, 870 F. Supp. 2d 133, 150 (D.D.C. 2012). The adjudication involved

⁹² Contrast the prohibition on Department regulations in 20 U.S.C. 1015b(i), regarding student access to affordable course materials. See *id.* ("The Secretary shall not promulgate regulations with respect to this section.").

⁹³ See *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 147 (D.D.C. 2012). In that case, the court recognized that the "statutory cohort default rule . . . does not prevent the Department from adopting the debt measures" for GE programs. *Id.* (citing *Career Coll. Ass'n v. Riley*, 74 F.3d 1265, 1272–75 (D.C. Cir. 1996), for the proposition that the Department's authority to establish "reasonable standards of financial responsibility and appropriate institutional capability" empowers it to promulgate a rule that measures an institution's administrative capability by reference to its cohort default rate—even though the administrative test differs significantly from the statutory cohort default rate test.").

⁹⁴ 20 U.S.C. 1094(a)(20). As one court explained, "The concern is that recruiters paid by the head are

Therefore, the Department did not depart from the ALJ's interpretation when the Department adopted outcome-based measures for GE programs in the 2011 Prior Rule.⁹⁸ Nor is the Department departing from that interpretation with these regulations.

Changes: None.

Comments: A few commenters argued that the Department does not provide adequate reasons for changing approaches from the 2019 Prior Rule, which rescinded the 2014 Prior Rule.

Discussion: We discussed departures from the 2019 rescission in the "Background" section of the NPRM.⁹⁹ Specifically, the Department remains concerned about the same problems documented in the 2011 and 2014 Prior Rules. Too many borrowers struggle to repay their loans, and the RIA shows these problems are more prevalent among programs where graduates have high debts relative to their income, and where graduates have low earnings. The Department recognizes that, given the high cost of education and correspondingly high need for student debt, students, families, institutions, and the public have an acute interest in knowing whether higher education investments payoff through positive repayment and earnings outcomes for graduates.

Changes: None.

Comments: One commenter asserted that the Department's 2019 action to rescind the 2014 GE regulation created a serious reliance interest, which will cause institutions to incur costs to comply with the requirements in this final rule. Another commenter noted that there is little correlation between the earnings data the Department relied upon in the NPRM RIA and the earnings data that has been posted on College Scorecard. This commenter believed that institutions have a reliance interest in how the Department has previously measured debt and earnings.

Discussion: The NPRM contained a *Reliance Interests* section,¹⁰⁰ where the Department acknowledged and considered reliance interests generally. We reiterate and reaffirm here that the Department's prior regulatory actions would not have encouraged reasonable reliance on any particular regulatory

position.¹⁰¹ The 2019 Prior Rule was issued to rescind the 2014 Prior Rule at a point when no program had yet been denied title IV, HEA eligibility as a GE program due to failing GE outcome measures over multiple years. Thus, institutions that were operating programs with title IV, HEA support at the time of the 2019 rescission could not have reasonably relied on continuing eligibility based on their title IV support between the 2014 and 2019 Prior Rules, and in any case the absence of eligibility denials limited the practical differences across rule changes for institutions and other interested parties. As we discuss elsewhere in this document, including the RIA, we do anticipate positive effects from this final rule, but we also observe that effects such as ineligibility of GE programs for participation in title IV, HEA will not occur immediately. Institutions and others will have some time to adjust. Furthermore, as various circumstances have changed, in law and otherwise, and as more information and further analyses have emerged, the Department's position and rules have changed since the 2011 Prior Rule. Such alterations in rules do not establish a firmly stable foundation on which interested parties may develop reasonable and legitimate reliance interests in a particular set of rules that they prefer. In any event, we find no reasonable reliance interest in the 2019 rescission persisting such that the Department could not revise its approach and, for example, observe meaningful performance-based limits on the eligibility of gainful employment programs for title IV, HEA participation. The commenters did not offer useful evidence or other bases on which the Department could reasonably conclude that asserted reliance interests, as to the prior rules or the College Scorecard, are real and significant rather than theoretical and speculative. On balance, the reliance interests asserted by the commenters have not changed our position that there are no plausible reliance interests that are strong enough to lead us to fundamentally alter these final regulations.

Changes: None.

General Comments on the Financial Value Transparency Framework (§§, 668.43, 668.401, 668.402, 668.403, 668.404, 668.405, 668.406, 668.407, 668.408, and 668.409)

General Support and Opposition

Comments: We received many comments expressing support for the financial value transparency framework as a means of protecting students and improving higher education outcomes. Commenters urged prioritizing the establishment of the program information website so that students have clear information about the institutions and programs they are attending or considering attending. These commenters supported efforts that would help students identify "high-debt-burden" and "low-earning" programs and urged the Department to keep these strong transparency provisions in the final rule to protect students and taxpayers. Several commenters argued that this information would allow students to make informed decisions about their education.

Discussion: We thank the commenters for their support. Under § 668.43(d)(1), the Department will provide, through a website hosted by the Department, program-level information on the typical earnings outcomes for graduates and their borrowing amounts, cost of attendance, and sources of financial aid for all programs where it can be calculated to help students make more informed choices. We agree that this information will help students make more informed choices and allow taxpayers and other stakeholders to better monitor whether public and private resources are being well used.

Changes: None.

Comments: Many commenters supported the proposed transparency framework as a way to provide prospective students with relevant information about the programs and professions they may wish to pursue. Commenters noted that it was often difficult for students to understand total college costs in comparison to employment rates and post-graduate earnings and said that the information provided in the transparency framework could fill in some information gaps for students. Some commenters believed that this platform would, over time, encourage students to select the institutions and programs that are more likely to meet their needs and standards. Other commenters noted that interests in certain job fields drive career paths, so some students would not be interested in information about different programs that offered higher pay.

the question whether a program in Jewish culture prepared students enrolled in the program for gainful employment in a recognized occupation.

⁹⁸ See *id.* In any event, the Department has provided ample reasons for disagreeing with narrower positions on the GE provisions and in favor of its positions on outcome-based measures, as reflected in these rules.

⁹⁹ 88 FR 32300, 32306–11 (May 19, 2023).

¹⁰⁰ 88 FR 32300, 32316 (May 19, 2023).

¹⁰¹ Our conclusions regarding reliance interests are guided by judicial opinions including *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

Discussion: We appreciate the comments recognizing the benefits to students and families that the increased transparency framework will provide in conjunction with information institutions provide about programs and services they offer.

Changes: None.

Comments: One commenter asserted that we need more empirical evidence that publishing data will change student outcomes. Other commenters suggested that interests in certain job fields drive career paths, so some students would not be interested in information about different programs that offered higher pay.

Discussion: The Department discussed the substantial evidence base around the role of transparency and student choice in postsecondary education in the NPRM and in the “Outcome Differences Across Programs” section of RIA.¹⁰² Information does not always sway student choice, but research suggests that providing students with comparable, timely information from a trusted source can influence their decisions.¹⁰³ The Department believes that the financial value transparency framework serves as an evidence-based approach to provide relevant, trusted, and timely information for student decision-making.

We understand that some students may be committed to pursuing a particular field and may not be swayed by information about other fields. But as the data in this RIA demonstrate, there are vast differences in earnings and debt outcomes for programs with the same credential level and field, and we anticipate that students already committed to a particular degree will benefit from being able to find programs with the best outcomes.

Changes: None.

Comments: A few commenters argued that the certain terms used in the NPRM to label programs that do not pass the D/E rates or EP measures could mislead students or misrepresent other positive aspects of the program. Commenters identified terms like “high debt burden” or “low earning” as overly pejorative.

Discussion: The D/E rates thresholds are based on research into how much debt service payments are affordable based on an individual’s earnings. Programs do not meet the D/E criteria when a program’s discretionary D/E rate is above 20 percent, and the annual D/

E rate is above 8 percent. As discussed in the NPRM, the discretionary D/E rate threshold is based on research conducted by economists Sandy Baum and Saul Schwartz,¹⁰⁴ and the annual D/E rate threshold is grounded in mortgage-underwriting standards. While the rules do not require the Department to use particular labels to describe the outcomes of programs under the D/E rates measure, we intend to use clear descriptive language to communicate these outcomes to students. For example, informing students that such programs are “high debt burden” provides context for the amount of debt that the student will take on relative to their early career earnings.

Similarly, the EP threshold is based on the median earnings of high school graduates in the labor force in the institution’s State. When the median earnings for graduates from a postsecondary program are lower than this threshold, terming the program, for example, “low earning” is appropriate. The Department views these terms as examples of clear and transparent descriptors for potential students; we believe that less direct phrasing would make it harder for students to interpret the information. However, while the Department believes that students should be informed about the consequences of their choices in programs, we will consider adding language to the Department’s program information website noting that the debt and earnings outcomes of programs are a subset of the myriad of factors students may consider important in deciding where to attend.

Changes: None.

Comments: One commenter suggested that the Department and the stakeholder community further discuss the application of the D/E rates and earnings premium metrics to all programs at all institutions before addressing the issue of student acknowledgments. This commenter noted that the required reporting of data will add costs and burden to institutions, particularly under-resourced institutions.

Discussion: The Department disagrees that the decision to apply financial value transparency metrics to programs across sectors and credential levels requires any further discussion. Because students consider both GE and non-GE programs when making postsecondary enrollment choices, providing comparable information for students would help them find the program that

best meets their needs across any sector. As discussed under “Reporting” above, while we are sensitive to the fiscal and logistical needs of institutions, we maintain that any burden on institutions to meet the reporting requirements is outweighed by the benefits of the transparency and accountability frameworks of the regulations to students, prospective students, their families, and the public.

Changes: None.

Financial Outcomes and Other Outcomes

Comments: Many commenters posited that although economic mobility is an important factor to many students, the value of higher education extends beyond purely financial benefits and the Department should recognize on the program information website, and on related warnings and acknowledgments, that there are many ways to measure the value of postsecondary education, such as increased civic participation and engagement; better health and well-being; increased sense of work engagement; lower reliance upon social safety-net programs; decreased rates of incarceration; decreased risk of homelessness; increased personal security; improved social status; and sense of personal achievement. Commenters said that focusing on program earnings for all programs promoted a false equivalency that all educational programs should be measured on this basis. Some other commenters noted earnings may not fully capture the value of benefits, such as health insurance, and job amenities, such as a flexible schedule.

One commenter further cited a study¹⁰⁵ highlighting additional individual and societal benefits of higher education, such as increased likelihood of employment; improved health choices; increased volunteerism; increased neighborhood interactions and trust; and intergenerational benefits.

Noting the numerous non-pecuniary benefits of postsecondary education, several commenters expressed concern that the nature of the D/E rates and EP measures is too simple to adequately reflect the full value of an education and one commenter opined that measuring a program’s value based solely on the D/E rates and EP measures would be arbitrary and capricious. Many commenters noted that the D/E rates measure is not the only metric that can be used to assess the value of

¹⁰² 88 FR 32300, 32322 (May 19, 2023).

¹⁰³ Steffel, Mary, Kramer, Dennis A. II, McHugh, Walter & Ducoff, Nick (2019). Information Disclosure and College Choice. The Brookings Institution (www.brookings.edu/wp-content/uploads/2020/11/ES-11.23.20-Steffel-et-al-1.pdf).

¹⁰⁴ Baum, Sandy & Schwartz, Saul (2006). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt (eric.ed.gov/?id=ED562688).

¹⁰⁵ Trostel, Philip (2015). It’s Not Just the Money: The Benefits of College Education to Individuals and to Society. LUMINA Foundation (www.luminafoundation.org/files/resources/its-not-just-the-money.pdf).

postsecondary programs and suggested that things like holistic value, social impact, import of work, or long-term economic value could also be used to measure the value of programs.

Discussion: The Department is not attempting to assess the full value of the education that programs provide based only on their debt and earnings outcomes through the D/E rates and EP measures. The Department recognizes that not all of the benefits of a postsecondary education are measurable or captured by debt and earnings, but low earnings or high debt burdens can significantly impact even those students who benefitted in other ways from their programs.

Further, while the Department agrees there are aspects of job quality that are distinct from earnings, we believe that earnings, which unlike non-monetary compensation can be calculated consistently for most graduates through administrative data sources, is the best way to capture the employment outcomes of program graduates for purposes of implementing the gainful employment statutory requirement. For instance, in most cases non-monetary compensation does not aid in assessing the ability of graduates to afford repayment of student debt.

The financial value transparency framework aims to provide transparency to students about dimensions of the financial consequences of attending postsecondary programs. In particular, these measures will be used to convey information to students about the typical costs, borrowing, and earnings outcomes for students who graduate from a program, and whether typical students who complete the program end up with high-debt-burdens, and therefore may be at elevated risk for associated adverse borrower outcomes. On the Department's program information website, a program's outcomes under the D/E rates and EP metrics will be provided to students alongside other financial value information to help students understand how the program may help in achieving their goals. As a steward of taxpayer funds charged with ensuring the proper administration of the title IV, HEA programs, the Department seeks to require that students are aware of such information before they enroll in programs with high-debt burdens. For non-GE programs, we do not limit aid or eligibility for such programs but allow students to decide whether, upon considering this information, the program has value to them.

Change: None.

Comments: Commenters also suggested that focusing on relative

education debt could harm some students by encouraging them to limit education loan borrowing by sacrificing basic needs like food and housing or promoting some type of employment even when attending school full time.

Discussion: We believe it is reasonable for students to know what the average education debt and earnings are for an educational program and believe that this information can be considered along with many of the other factors suggested by the commenters. The information the Department will present is not describing debt as bad or to be avoided. Rather, it is giving students information about how affordable their debt payments will be based on the typical earnings of students in their programs. Students deserve to be aware of this information, and institutions have the capacity to control their pricing to avoid subjecting their students to unaffordable debts.

Changes: None.

Potential Impacts on Lower Earning Fields

Comments: Commenters suggested that focusing on program earnings takes a narrow view that higher education is primarily about securing a job and misses the value of a liberal arts education and the value to society from those graduates. Some commenters emphasized that many students pursue careers in fields that help people such as social work, counseling, leadership, teaching, and a variety of cosmetology programs including hairstylists and estheticians. Nursing was another field where commenters noted that some institutions prepare instructors and practitioners to work in health care services where some jobs would not produce high earnings. Commenters also suggested that teaching programs should be excluded from application of the GE program accountability framework.

Discussion: The Department does not agree that providing information about education debt and average earnings for program graduates to students and families ignores the value of programs that may have lower earnings outcomes. Again, the Department is attempting to make debt and earnings information available to students and families on a comparable basis for programs so that they can use it to support the different career choices that may be under consideration, or to find a program within a particular field that is most beneficial to them.

As we demonstrate in Table 4.11 in the RIA, most programs in most fields pass the D/E rates measure, including programs that provide training for

occupations in healthcare. In healthcare (Health Professions and Related)—the program cited by the commenters—8.2 percent of GE programs did not pass the D/E rates or the EP measure and 2.0 percent of non-GE programs did not pass the D/E rates or the EP measure. Similarly, education training programs (*i.e.*, programs with a two-digit CIP code of 13) are less likely to fail the D/E rates or EP measure than other programs. We note that teaching programs that successfully place their students in teaching jobs are unlikely to fail to meet the earnings premium criteria. For example, data from the National Education Association's Teacher Salary Benchmark Report indicates that among reporting school districts, approximately 76 percent of teachers worked at schools that offered a starting teaching salary of at least \$40,000.¹⁰⁶ Even States with lower salaries have average starting salaries at least \$5,000 higher than the State's EP threshold.¹⁰⁷

The Department fundamentally disagrees that ignoring the financial implications of students' college choices is an acceptable or necessary strategy to ensure that students pursue jobs in critical fields to society.

Changes: None.

Comments: Some commenters contended that publication of the financial value metrics could limit access to, or discourage students from enrolling in, arts and performing arts programs. These commenters stressed that these careers should be available to all and not just to affluent students who can attend without Federal financial aid.

Discussion: The Department believes that students of arts programs will benefit from consistent information about the typical debt and earnings experienced by a program graduate, particularly if the D/E outcomes for program graduates are in a range associated with high likelihood of student loan default. For non-GE programs, receiving this information does not preclude their ability to attend the program—it simply alerts them to the potential risk based on the program's students' outcomes. Approximately 12 percent of arts programs are GE programs.

Arts programs that fall under GE regulation have a failure rate that is similar to GE programs overall. According to the Program Performance Data (PPD) described in Table 4.11 of

¹⁰⁶ See Nat'l Ed. Ass'n (2022). Teacher Salary Benchmarks (www.nea.org/resource-library/teacher-salary-benchmarks).

¹⁰⁷ See Nat'l Ed. Ass'n (2022). Teacher Salary Benchmarks (www.nea.org/resource-library/teacher-salary-benchmarks).

the RIA, 5.3 percent of all GE programs fail due to D/E, EP, or both. Among the 1,042 GE arts programs (programs with a two-digit CIP code of 50), a similar share, 5.5 percent, have a failing status. Among the 7,518 arts programs that are non-GE programs, failure rates are slightly higher than for programs overall, but still relatively low. Using the PPD, 1.2 percent of all non-GE programs fail debt-to-earnings (DTE), EP, or both, and 3.7 percent of arts programs fail.

Although commenters acknowledged that arts careers are financially undercompensated relative to other career paths, federally aided students enrolled in arts programs tend to come from backgrounds similar to students enrolled in other programs, indicating that, among federally aided students, students from economically disadvantaged backgrounds are not currently dissuaded from pursuing a career in the arts. For example, the share of students who are Pell recipients

within arts programs is broadly similar to the share of recipients overall across programs (Table 1.1). Institutions that are concerned that financial transparency will dissuade students from lower-income backgrounds from pursuing arts degrees could take steps such as packaging additional aid for students pursuing arts programs. This would decrease the risk of a high DTE and potentially mitigate the effect of lower typical salaries in the first few years of an arts career.

TABLE 1.1—MEAN AND MEDIAN PELL SHARE, ACROSS PROGRAMS

	All programs			Arts programs (CIP2 = 50)		
	Mean (%)	Median (%)	Number of programs	Mean (%)	Median (%)	Number of programs
Credential Level: Undergraduate (UG) Certificates	53	60	18,033	45	40	453
Associate	61	67	25,807	64	69	1,248
Bachelor's	38	36	47,643	41	40	3,792
Total	47	50	91,483	47	48	5,493

Source: 2022 Program Performance Data.

Changes: None.

Comments: Some commenters expressed concern that the focus on debt-to-earnings and earnings could lead students and prospective students to prioritize salary over public service. By publishing these data and possibly categorizing certain programs as “low value,” we may discourage students from pursuing careers that are less lucrative but that have substantial value, such as careers in government or the nonprofit sector.

Discussion: The Department acknowledges the concern that students may be dissuaded from pursuing programs, and ultimately, careers, that are primarily in the public sector or with nonprofit organizations. National data from the American Community Survey (ACS) on earnings by sector show, however, that the typical associate or bachelor's degree graduate working for government or a nonprofit substantially out-earns similarly aged workers with only a high school

credential (Table 1.1). We estimate that a government worker with an associate degree has median earnings more than \$13,700 higher than the overall median earnings for those with a high school diploma. A government worker with a bachelor's degree has earnings that are more than \$19,100 higher. Those working in the nonprofit sector earn around \$7,100 (associate) and \$15,200 (bachelor's degree) more relative to similar workers with a high school diploma.

TABLE 1.2—MEDIAN EARNINGS, WORKERS IN LABOR FORCE AGE 25–34

Credential	Overall	Private sector	Federal, state, or local govt.	Nonprofit sector
High School or Equivalent	\$25,453	\$25,569	\$31,961	\$21,582
Associate Degree	32,049	31,961	39,200	32,580
Bachelor's Degree	45,811	48,870	44,638	40,725
Graduate Degree	49,639	52,147	47,941	45,000

Source: American Community Survey, 2019, 5-year estimates.

These data indicate that workers within a given degree level tend to have relatively similar earnings across private sector, government, and nonprofit employers. And for those with an associate degree, employment within a Federal, State, or local government yields higher median earnings than employment in the private sector. While working in the private sector is more lucrative, at the median, for bachelor's degree and graduate degree holders, these differences are much smaller than

the difference relative to the earnings premium threshold at the national level.

Changes: None.

Comments: A few commenters expressed concern that publication of financial value metrics could deter students from graduate education. Given differences in student loan eligibility and available Federal aid, commenters suggest that the proposed financial value metrics do not align well with the goals and earnings trajectories of those who enroll in graduate education.

Discussion: The Department aims to provide students with accurate information to help inform their choices. We acknowledge that some students might decide that not attending school might be the best option after obtaining the information.

Graduate students are eligible to borrow up to the cost of attendance for their program, while undergraduates are subject to substantially lower limits on borrowing, depending on their enrollment level and status as a

dependent or independent student. Because of the increased eligibility for student loans and their generally higher earnings outcomes, graduate programs that do not pass the GE thresholds typically fail the D/E standard of the GE rule, rather than the EP.

The Department believes that the D/E metric is valid across both undergraduate and graduate programs. As noted above, few graduate programs have median earnings below the typical high school student, but many programs have very high debt levels due to the lack of loan limits. This can make debt unaffordable even on a middle-class salary. Moreover, from a taxpayer perspective, as shown in Table 2.10 of the RIA, D/E is highly correlated with the taxpayer subsidy on student loans—if debt is high relative to earnings, it is unlikely a borrower will fully payoff their loans while on an income driven repayment plan.

The Department also notes aspects of the rule that are favorable to graduate programs. First, the debt used in the actual D/E calculations will be capped at the total net cost for tuition, fees, and books. This cap particularly affects graduate programs, as many graduate students borrow substantially for living costs in addition to direct costs of the program. As we note in the RIA, we do not have data reported by institutions to estimate directly how this cap will affect the share of programs that pass the D/E rates. An analysis by New America, however, suggests that the debt cap might reduce the number of graduate programs projected to fail in the RIA substantially by about 50 percent.¹⁰⁸ Because institutions have more control over direct program costs, some institution concerns about graduate financial value metrics will likely be mitigated. Furthermore, in the D/E rates calculation, graduate debt is amortized over a 15-year repayment period for master's degree programs and over a 20-year period for doctoral and first professional degrees. The use of a longer repayment period acknowledges the possibility that long term earnings are higher in proportion to earnings measured 3 years after graduation, the potentially larger amounts of debt that some graduate students may take on and allows for smaller annual payments based on a longer repayment period. We address additional concerns relevant to graduate programs, such as licensing and residencies for graduate programs

that may result in lower initial earnings due to externally imposed constraints, in other sections of this preamble.

Changes: None.

Comments: Some commenters noted that many jobs in the entertainment industry may be impacted by the financial value and transparency regulations, given that a number of students in those fields are dependent upon Federal education assistance. The commenters suggested that those students may become more restricted in their opportunities to pursue careers in performing arts, music and education compared to students from more affluent families. Commenters noted that in general, the United States provides less support for students of the performing arts compared to other countries, and further opined that the lower wage for these jobs is beyond the control of the institutions providing those programs, notwithstanding the contributions those jobs make toward creativity and societal wellbeing.

Discussion: We recognize that educational programs can provide long term value and enrichment to students in multiple ways, and that some student may be interested in arts and entertainment careers for non-pecuniary reasons. We nonetheless note that the education debt and program earnings experienced by program graduates at specific institutions are a significant up-front consideration for any student to consider. Students looking at particular programs offered at multiple institutions may also consider the relative education debt and program earnings when selecting an institution. Institutions may also use the information about average education debt and earnings to consider program changes that would better serve students entering into careers with relatively large education debt compared to the near-term earnings. We appreciate the commenters' concerns about the level of support for performing arts relative to other countries, but respectfully note that such broader issues of the economic and social value of performing arts are beyond the scope of this rule.

Changes: None.

Data Concerns and Other Information or Metrics

Comments: Several commenters suggested including measures of student satisfaction among the other measures listed in § 668.43(d)(1)(ii) to include on the program information website to provide context for the financial value measures.

Discussion: We recognize that there are many factors students consider when choosing to enroll, or continue, in

a program, and also that education can confer many benefits beyond financial value, including satisfaction with the program. However, we are here focused on factors that affect students' financial well-being, and the return on the title IV, HEA financial investment. Low earnings and high debt burdens can negatively affect students who might benefit in other ways from their programs. More generally, measures of student satisfaction do not exist for all programs and the Department has no way of collecting such data in a systematic fashion at present.

Changes: None.

Comments: A few commenters noted that program-level graduation rates could have a substantial impact on financial value measures. They noted that a program that graduates a small share of enrolled students may have strong financial value measures, but overall financial value results may be poor for those who never completed the program. The commenters suggested that we provide information on the likelihood of completing the program as important context for the financial value metrics.

Discussion: The financial value metrics measure the earnings and debt only for those who complete a given program. The Department believes that these measures best represent the outcomes for a student who naturally anticipates to complete a given program. Enrolled students who do not complete could have outcomes that are worse overall than those for completers, but this is not necessarily the case. For example, non-completers could leave a program because they were offered a job that pays more than they anticipate they would earn if they completed their program. Further, those who do not complete a program are likely to leave with less debt than those who do, potentially lowering D/E measures.

At present, program-level graduation rates are not consistently measured or collected by the Department. Measurement of program graduation rates raises several measurement challenges.¹⁰⁹ For example, some bachelor's degree programs do not formally consider a student part of a program or major until their sophomore or junior year, which could substantially skew the graduation rate relative to a program which counts students starting from their freshman

¹⁰⁸ See Caldwell, Tia & Garza, Roxanne (2023). Previous Projections Overestimated Gainful Employment Failures: Almost All HBCUs & MSI Graduate Programs Pass. New America (<https://www.newamerica.org/education-policy/edcentral/ge-failures-overestimated/>).

¹⁰⁹ Blagg, Kristin & Rainer, Macy (2020). Measuring Program-Level Completion Rates: A Demonstration of Metrics Using Virginia Higher Education Data. Urban Institute: Washington, DC (www.urban.org/sites/default/files/publication/101636/measuring_program-level_completion_rates_1_3.pdf).

year. Still, the Department strongly agrees with the importance of holding institutions accountable for program completion and will explore development of accurate measures. The rule includes completion rates at the institution or program level among a set of important contextual information that may be included on the program information website.

Changes: None.

Comments: A few commenters requested that the Department include on the program information website information on cohort default rates, or a program's loan repayment rates, as additional context regarding a student's ability to manage or repay their debt.

Discussion: We agree that a program's loan repayment rate may be important information for students or taxpayers, and we note that this information was included in the list of proposed information under § 668.43(d)(1).

Although the cohort default rate (CDR) is an important measure of institutional accountability in ensuring that students do not experience exceptionally high default rates after leaving a program, an overall CDR does not measure outcomes of a given program. Moreover, graduate PLUS loans are not included as part of the CDR calculation, so these rates do not capture borrowers' outcomes even for broad sets of graduate programs. The Department will carefully consider what borrower outcome information will provide students with the clearest sense of the financial risks of their program choices, including whether institution level measures may be appropriate to provide where program level measures may be unavailable.

Changes: None.

Comments: Several commenters noted that high percentages of their career program graduates work in the fields associated with their training, unlike many students with associate degrees from public and nonprofit institutions that get jobs in unrelated fields. Commenters also noted that other jobs such as sales often start with lower salaries that increase over time as they learn their trades on the job.

Discussion: The regulations do not track earnings by source but provide some measure of the average education debt and average earnings that program graduates have. Graduates of career training programs who work in those fields may experience higher earnings than program graduates from nonprofit and public institutions who work in unrelated fields. The regulations will provide students considering either type of program with information about the education debt and earnings associated

with those programs to support them making better informed choices when they enroll.

Changes: None.

Comments: One commenter asserted that 4-year degree programs can charge students higher prices despite having no industry connections. A few other commenters noted that many students in 4-year programs are unable to get jobs, while students in shorter career and technical education (CTE) programs (which cost less) are able to get jobs.

Discussion: We agree that CTE programs are important. By ensuring that programs subject to the GE program eligibility requirements, including CTE programs, prepare students for gainful employment in a recognized occupation, we expect that the GE program accountability framework will drive improvements in CTE programs that are not providing students with earnings that allow them to afford their debt or leaving them better off than if they had not pursued a postsecondary credential. For 4-year programs that are not subject to the GE program accountability framework, students will be able to obtain critical information about their financial value, including their costs and student debt and earnings outcomes, to inform their education decision making.

Changes: None.

Comments: Some commenters suggested that the Department should play a role identifying unique missions of institutions, such as historically black colleges and universities and Tribal colleges and universities because of the social and cultural impacts these institutions provide as non-financial value.

Discussion: Under § 668.43(d)(1), the Department will provide, through a website hosted by the Department, program-level information on the typical earnings outcomes for graduates and their borrowing amounts, cost of attendance, and sources of financial aid to help students make more informed choices and allow taxpayers and other stakeholders to better monitor whether public and private resources are being well used. Nothing in the regulations precludes institutions from supplementing the financial value information provided on the Department website with additional information about the institution and its programs, including information for students and families about their missions and values. However, the Department website will be focused on financial value, consistent with the Department's obligation to administer the title IV, HEA financial assistance programs.

Changes: None.

Comments: A few commenters noted that the debt and earnings data used in the financial value transparency metrics do not precisely align with those measures presented in the College Scorecard.

Discussion: The financial value transparency metrics are designed for accountability purposes (with respect to GE programs) as well as for transparency (with respect to GE and eligible non-GE programs). Because these data serve different, though complementary, purposes the metrics are not quite the same as those in the College Scorecard although there are strong correlations between the information in the two datasets. For example, median earnings in this rule, similar to the 2014 Prior Rule, is calculated as the median earnings among all program completers including the "zeros"—i.e., individuals successfully matched in the list of program completers who have no earnings from employment. Especially for career training programs this measurement choice captures whether students find employment as a measure of program success. Similarly, median debt under this regulation is calculated by capping individual borrowing amounts at the net direct costs charged by the institution. This attempts to isolate student borrowing linked to factors more directly controlled by institutions. Still, broader measures of debt can be calculated and used for transparency purposes. The Department will carefully consider how to present information to students to avoid potential confusion.

Changes: None.

General Comments on the GE Program Accountability Framework (§§ 600.10, 600.21, 668.91, 668.601, 668.602, 668.603, 668.604, 668.605, and 668.606)

General Support and Opposition

Comments: Many commenters expressed support for building on the 2014 GE Prior Rule, including the addition of the earnings premium metric. These commenters believed that this metric would ensure that students only enroll in programs that would result in them being gainfully employed upon completing the program. Commenters also supported the inclusion of the D/E rates metric, arguing that this measure would protect taxpayers and students. Some commenters suggested that because of the rule, students will shift from enrolling at low-performing programs to programs with better outcomes, including shifting across sectors, similar

to what happened when institutions with high cohort default rates lost eligibility to participate in the Federal student aid programs.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: One commenter asserted that these regulations would help to protect students from taking on high levels of debt to obtain credentials with little to no value. The commenter also contended that there should be greater consequences for schools that commit fraud.

Discussion: We agree there should be greater consequences for schools that commit fraud. The Department's Office of the Inspector General (OIG) identifies and investigates fraud, waste, abuse, and criminal activity involving Department funds. Where we believe it is warranted, we can refer a situation to the OIG, which conducts criminal and civil investigations. Additionally, members of the public may report suspected fraud, waste, abuse, or criminal activity—including fraud or misuse of Federal student aid funds. The OIG maintains a telephone hotline and an online form to facilitate submission of such reports.

While these regulations do not replace other robust Department efforts aimed at ensuring program compliance and program integrity, the rule should make predatory behavior less attractive and less lucrative if poorly performing GE programs are not eligible to participate in title IV, HEA.

Changes: None.

Comments: Many commenters supported the GE rule because they believe it will help stop predatory recruitment practices that specifically target marginalized and underserved communities, including people of color, people with low socioeconomic status, single parents, and veterans. These commenters claimed that programs at these predatory schools have low graduation rates, high student debt loads, high student loan default rates, and higher tuition than comparable programs at State and community colleges.

Several other commenters expressed support for the GE accountability provisions, noting that most borrower defense loan discharges have been for students who attended for-profit institutions, and said that most accountability measures should focus on the institutions where large costs to the taxpayers have been incurred. Commenters noted that many completers from some for-profit institutions have incomes that would qualify them to make zero payments

under the Department's recently proposed income-driven repayment plan and create additional costs for taxpayers.

Discussion: We thank the commenters for their support and agree the GE rules apply to programs where students need protection.

Changes: None.

Purpose

Comments: Many commenters noted that the EP and D/E metrics do not capture all the ways that programs might be valuable for students and society, and thought the measures too narrowly focused on financial outcomes.

Discussion: In the GE program accountability framework, we use the EP and D/E metrics to assess whether programs are preparing students for gainful employment, consistent with statutory eligibility requirements. But, the use of particular performance metrics pursuant to the GE provisions of the HEA and the Department's rulemaking authority is not a commentary on the values that students and others may place on postsecondary education. As we demonstrate in Table 4.11 of the RIA, the majority of programs in most fields do not lead to high debt burdens or low earnings. As a result, we do not expect the rule to deprive students of postsecondary options that offer the nonfinancial benefits of greatest importance to them.

We underscore that the rule sets minimum standards of performance for career training programs, and for informing students in non-GE programs about potential financial risk. It does not attempt to distinguish among or rate programs based on their earnings above these standards beyond providing students with information. As such, we expect that programs meeting these minimum thresholds of financial outcomes for their students will still need to demonstrate how they help students in pursuing other goals that may be important to them.

Changes: None.

Comments: A few commenters suggested that the proposed GE program accountability framework will not fix the current systemic problems. Some commenters proposed that, rather than targeting so-called "low value programs," we should address systemic issues contributing to the student debt crisis. For example, these commenters suggested that we provide adequate funding and resources to public institutions, implement more affordable tuition models, and expand financial literacy programs.

Discussion: The Department agrees that some systemic changes are needed to address the student debt crisis. And, in a variety of initiatives, the Department is responding to that crisis. For example, the Department recently published a new rule on IDR plans for student loans. Notwithstanding the importance of addressing systemic issues, the Department is charged with implementing and enforcing the HEA limits on title IV eligibility for GE programs and has concluded that programs that leave students unable to pay off their loans, or with earnings no greater than a comparable high school graduate, are not meeting the statutory requirements for title IV, HEA funding. The final rule will make meaningful strides in deterring students from attending programs that leave them with unaffordable debt and no improvement to their earnings. As noted in Tables 4.25 and 4.26 of the RIA, most students have available many alternative programs that do not fail the metrics, and these programs are very likely to lead to higher earnings and lower debt. Therefore, we expect the rule will result in students attending programs that require less borrowing or provide a better financial value in that they will lead to higher earnings relative to the amounts borrowed.

Changes: None.

Comments: Some commenters suggested that it would be more effective to limit borrowing in low-performing programs rather than to remove all Federal funding, noting that this would still protect students from high educational debt without limiting the types of programs that are available for them to pursue their passions and career goals in fields that may not be high-earning. One commenter noted that students have differing career objectives and was of the opinion that the Department and institutions offering those programs should strike a balance to keep these options open for students, suggesting that career counseling and accurate information could support those outcomes and a diverse workforce. Other commenters said that without striking a more holistic approach in the proposed regulations, there could be reductions in program diversity and more limited student choices available. Providing more quality assurance measures and a broader evaluation of other factors, such as curriculum, student satisfaction and achievements, were suggested as additional components to use with the financial-value measures in the proposed regulations. Commenters also suggested the Department should work with the higher education community to develop

alternative metrics that speak to a more holistic spectrum of success determinants.

Discussion: We agree there are many potential ways that students might be shielded from unaffordable debt or programs that fail to boost their earnings. Institutions are in the best position to limit their costs and limit student borrowing for direct costs (the subset of borrowing measured under the metrics in these regulations), and to provide counseling and guidance to students in choosing programs that prepare them for success. The Department's authority and ability to monitor curriculum quality across programs is limited. As noted elsewhere, these rules do not attempt to serve as a holistic measure of program quality. Instead, they focus on setting minimum standards aimed at ensuring that career training programs prepare students for gainful employment, and, more generally, to protect students from programs that may not improve their financial well-being.

Changes: None.

Comments: One commenter argued that controlling college costs should not be part of the Department's role, but it should instead concern itself with reining in lending. The commenter argued that the Department should set aggregate loan limits for all students to current limits for undergraduate students.

Discussion: The Department disagrees with the commenter that its role does not include encouraging institutions to offer programs that are financially valuable to students when the students' debt and likely future earnings are taken into account. The Department also does not have the ability to reduce aggregate loan limits for graduate students, since those limits are established by statute.

Changes: None.

Comments: A few commenters argued that it is not a school's responsibility to ensure that a student pays back their loans. According to these commenters, that responsibility lies with the borrower.

Discussion: The Department believes that pursuant to the GE statutory requirement, career training programs should be held responsible for ensuring the amount their students need to borrow is reasonable relative to the earnings they might expect from the career for which they are being trained. If programs set unreasonable tuition levels that lead students to borrow more than they can afford to repay, this puts borrowers at risk of default and adverse impacts on their credit and puts the taxpayer at risk of having to bear the cost of the loans. Under the D/E rates

measure, institutions are not held responsible for loan repayment outcomes. Rather, the D/E rates portion of the transparency framework provides a means to assess whether debt burdens are excessive given the typical earnings of program completers, and whether students' labor market earnings improve relative to students who do not pursue postsecondary credentials. The GE accountability framework applies this metric as a condition of eligibility for career programs. As addressed below, we believe the compliance burden created by these regulations is modest and well justified by the benefits expected from the rule.

Changes: None.

Scope

Comments: Several commenters stated that it is unfair to group together all private and for-profit schools when there are only a few "bad actors" causing problems. They asserted that these GE regulations will punish schools that are acting in good faith, and that there should not be a "one-size-fits-all" solution to these bad actors. They argued that different regulations should apply to for-profit and nonprofit schools since their missions differ.

Other commenters viewed the distinction between GE and non-GE programs as unclear, and argued that instituting sanctions for some programs, but not for others, based on sector or credential type is not appropriate. Commenters highlighted that an institution's tax status was not a good reason to treat programs differently under the proposed eligibility measures and voiced some concern that institutions with failing programs could change their tax status to avoid being held accountable under the eligibility provisions. Some commenters said the proposed regulations were politically motivated to target the career training programs and suggested that more emphasis should be placed on removing Federal funds from programs that pushed false information or promoted activism and political agendas. The regulations were described by these commenters as an effort to quickly eradicate the proprietary school sector instead of proposing a set of guardrails that would have encouraged institutions to operate within that system.

Discussion: The GE accountability framework applies to gainful employment programs through § 668.601. Section 668.2 defines "gainful employment program" as an educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of

Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. This definition is consistent with sections 101(b) and 102(b) and (c) of the HEA. Under the HEA, institutions must establish program-level eligibility for each "program of training to prepare students for gainful employment in a recognized occupation."¹¹⁰ GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private nonprofit institutions, such as community colleges. With respect to comments that some institutions may change their tax status to remove their programs from being subject to the eligibility measures, applications to do so are reviewed independently by the Internal Revenue Service (IRS) and the Department to make sure the institution qualifies as a nonprofit entity.

In addition to being statutorily obligated to confirm whether GE programs are eligible for HEA assistance, we believe that it is appropriate to protect students in GE programs in all sectors, to help protect students pursuing career training through such programs from being left with unaffordable debt or with no improvement in their labor market prospects beyond what they might have achieved without earning a postsecondary credential. The GE accountability framework is based on objective and evidence-based measures of student outcomes and, rather than being a one-size-fits-all approach, its impact on institutions is directly in proportion to the number of students they have enrolled in programs that are not serving students well based on the D/E rates and EP measures. The GE framework, applied as a measure of a program's continuing title IV, HEA eligibility, will be similarly applied to all GE programs, regardless of location or student demographics. GE programs will be held to the standards for GE programs uniformly, regardless of whether they are taught at public, proprietary, or nonprofit private institutions.

The Department does not have authority to expand the definition of a GE program to include non-GE programs. The financial value transparency framework is the Department's attempt to account for

¹¹⁰ 20 U.S.C. 1002(b)(1)(A)(i), (c)(1)(A). See also 20 U.S.C. 1088(b)(1)(A)(i), which refers to a recognized profession. For further discussion in the NPRM, see 88 FR 32300, 32306–32311 (May 19, 2023).

eligible non-GE programs, by providing students in such programs with important information. Other statutory provisions apply more broadly to GE and non-GE programs, and the Department will use the tools at its disposal to protect students and improve outcomes. For example, we are also addressing eligible non-GE programs through other Department initiatives, such as the final rule we published last year on Change in Ownership and Change in Control.¹¹¹

Changes: None.

Comments: Several commenters asserted that the Department could require the eligibility framework to apply to all programs, based upon the Department's authority under 20 U.S.C. 1087d(a)(4) or 20 U.S.C. 1087d(a)(6), to include additional conditions necessary to protect the interests of the United States when approving an institution's participation in the Direct Loan programs. Other commenters said it is arbitrary for the Department to treat comparable programs differently and suggested that this different treatment violated a requirement in the HEA that the Department's regulations must be uniformly applied and enforced.

Discussion: We disagree with the commenters' suggestions and criticism. The Department must use its statutory authority in ways that accord with the various distinctions drawn in the HEA. The HEA conditions eligibility of some, but not all, programs on preparing students for gainful employment in a recognized occupation or profession. The commenters did not explain how those HEA provisions regarding GE programs fit with the commenters' suggested use of the HEA provisions regarding program participation agreements. Likewise, we disagree with commenters' arguments regarding uniformity in Department regulations. The commenters did not identify a basis for their recommended conclusion in 20 U.S.C. 1232(c), which refers to uniform application and enforcement throughout the 50 States rather than across program types. Nor did commenters identify any other statutory provision that requires GE program regulations to bind non-GE programs. In addition, linking the program accountability framework to the Department's Direct Loan authority as the commenters suggest would exclude programs that do not participate in the Direct Loan program. The commenters may prefer that gainful employment results be expected of non-GE programs, and we understand the policy considerations associated with that issue, but we lack persuasive

reasons to conclude that the Department's regulations must adopt that position as a matter of law.

Changes: None.

Comments: Several commenters stated that the proposed GE Accountability framework fails to account for the significant and multiple economic, social, and governmental differences between Puerto Rico and the United States. For example, these commenters stressed that Puerto Rico has no community college system and relies on proprietary institutions to provide a significant and varied portion of career-oriented educational opportunities. Therefore, these commenters advised that proprietary institutions in Puerto Rico award a far higher proportion of the island's postsecondary credentials than is the case on the mainland. The commenters contended that the proposed rule would place access to such programs in serious jeopardy. These same commenters stated if implemented as-is, without accounting for Puerto Rico's unique circumstances and challenges, the population, economy, and multiple industries on the Island will be adversely and irreparably harmed.

One commenter emphasized the ways in which earnings measurement issues are more a particular concern given the unique challenges facing Puerto Rico, stating that the justifications offered by the Department for not including an alternate earnings appeal fail to acknowledge the unique nature of Puerto Rico's economy. Citing the Department's claim that making accommodation for under-reporting of income would "differentially reward programs," the commenter submitted that the desire to be evaluated based on accurate data is not a desire to be rewarded but to address the fact that nonreporting and underreporting of income are widely recognized challenges facing Puerto Rico.

Discussion: As we noted in the NPRM, the Department is aware that, in some cases, using earnings data for high school graduates to estimate an earnings threshold may not be as reliable as the earnings data from the ACS, and welcomed comment on what data might be available to estimate the threshold in U.S. Territories.¹¹² In response to the commenters' concerns, the Department further investigated issues of data quality in Puerto Rico as well as other U.S. Territories and the freely associated states.

Through this investigation, we identified several concerns with data elements used in the rule with regard to

their application to programs at institutions in U.S. Territories and freely associated states. First, there is no robust source of earnings information in most U.S. Territories that would allow us to measure high school earnings. While we considered using a different threshold, such as 150 percent of the Federal Poverty Level, available data (data on high school earnings from the Puerto Rico Community Survey) suggested this approach would yield a threshold that is dramatically higher than high school earnings. While data do exist for Puerto Rico, the coverage rate of the Puerto Rico Community Survey (PRCS) is significantly lower than that of the ACS.¹¹³ Moreover, the Federal Poverty Line (officially known as the poverty guidelines), used in the calculation of discretionary debt-to-earnings measures is not defined for the U.S. Territories and freely associated states. The Federal Poverty Line is a component of the D/E metric, used to define "discretionary earnings" by subtracting an estimate of the income required for necessary expenses. As a result, the Department is not confident that the thresholds used to determine an affordable amount of debt in the D/E rates calculations are appropriate for programs in these locations.

Because of these concerns, the Department will exempt all programs located in the Territories or freely associated states from most of the requirements in the transparency framework under subpart Q, and from the GE accountability provisions under subpart S. We will still require such programs to comply with the reporting requirements in § 668.408, will still follow the procedures in §§ 668.403(b) and (d) and 668.405(b) and (c) to calculate median debt and obtain earnings information, and will include debt, earnings, and price information on the Department's program information website established in § 668.43.

Changes: We have revised § 668.401(b) to exempt the Territories and freely associated states from the application of subpart Q, except that such institutions remain subject to the reporting requirements in § 668.408 and the Department will follow the procedures in §§ 668.403(b) and (d) and 668.405(b) and (c) to calculate median debt and obtain earnings information for their GE programs and eligible non-GE

¹¹³ According to the Census, in the 2021 ACS and PRCS the coverage rate in Puerto Rico is 80.9 percent, relative to 94.5 percent in the United States and Washington, DC. The lowest state (Alaska) had a coverage rate of 88.0 percent. See www.census.gov/acs/www/methodology/sample-size-and-data-quality/coverage-rates/index.php. These figures indicate that Puerto Rico is an outlier.

¹¹¹ 87 FR 65426 (Oct. 28, 2022).

¹¹² See 88 FR 32300, 32333 (May 19, 2023).

programs, and we have revised § 668.601(b) to exempt the Territories and freely associated states from application of subpart S.

Comments: Some commenters urged the Department to exempt medical schools from the GE program accountability framework given the higher levels of borrowing students experience in those programs and the higher earnings later associated with those careers after physicians complete their residencies. Similar suggestions came from commenters to exclude law schools from the eligibility measures because the accreditation process provides oversight of admission standards, monitors faculty providing the coursework, reviews the academic engagement of the students, and sets benchmarks for graduates to pass the bar exams. These commenters believe that the law school accrediting process ensures students obtain long-term value from their legal education.

Discussion: As discussed in more detail in the Post-graduate Training Requirements section of this preamble which modifies the definition of the cohort period and adds a definition of a qualifying graduate program in § 668.2, these regulations already accommodate the commenters' concern about medical schools, by using a longer time horizon over which to measure graduates' earnings—six-years post-graduation rather than three. We do not agree that the accreditation process by itself provides adequate guardrails to ensure that students are not left with unaffordable debt or very low earnings. This is readily apparent in the Department's data, showing many accredited programs leave students with unaffordable debt.

Changes: None.

Comments: A few commenters requested that embedded certificates, stackable credentials, and transfer associate degrees be exempted from GE determinations because these programs are intended to combine into larger degree programs which, for public and nonprofit institutions, would not be subject to the GE accountability framework. One commenter requested further clarification about the treatment of certificates that are fully embedded into a degree program, in which students are not able to enroll in just the certificate program. The commenter was unsure of the extent to which a public/not-for-profit institution would need to report on students in a certificate program that is both embedded in a degree program and also available as a stand-alone certificate program.

Discussion: The metrics used for evaluating whether a program leads to

gainful employment are based on students who complete various credentials at an institution, and if a student completes multiple credentials, they would typically only count in the metrics of the highest credential they earn. A student completing several stackable credentials would generally be included in the earnings and debt cohorts of their last or highest credential completed. Students completing a program with intermediate credentials may have higher program costs that would impact the debt outcome calculations for the program since the debt students accumulate at the same institution is generally all included.

We disagree that such programs should be exempted from the GE framework. If a student does take several intermediate credentials before obtaining a higher degree, then the student's cumulative debt and earnings outcomes are all, appropriately, associated with the higher credential. If they complete an intermediate credential but do not obtain the ultimate intended degree, then their debt and earnings outcomes are attributed to the last or highest credential they obtained.

Changes: None.

Comments: Some commenters suggested that credit-bearing non-degree programs at public and nonprofit institutions should be excluded from the eligibility framework if the institutions offering those programs also offered certified degree programs that used the identical CIP codes as the non-degree programs, particularly when there was overlap in the courses offered for the non-degree and degree programs that shared the same CIP code.

Discussion: We do not believe a such an exclusion is warranted. If students separately enroll in a certificate program at the institution, that program is a GE program for purposes of the eligibility framework. If students in a public or nonprofit program take courses in these programs but ultimately earn a credential, then those students will not be counted as they are not graduates of the program.

Changes: None.

Comments: Some commenters suggested that graduate programs not be included in the accountability framework because of the volatility of graduate career paths. Other commenters noted that doctorate programs leading to licensure should be excluded because the students are more mature and should have more experience in evaluating and selecting educational programs. Other commenters claimed that graduate Federal education funds were not included when proprietary schools were

approved to participate in the grant and loan programs so there was no congressional design to apply the gainful employment requirement on those programs when they were subsequently made available to proprietary institutions. Other commenters drew the opposite conclusion, that graduate programs became eligible for student aid without any exception to the gainful employment requirement for degree programs offered by for-profit institutions. Those commenters suggested that the higher debt levels associated with many graduate programs favor using the eligibility framework to assess program earnings, describing those graduate programs as the highest priced, highest debt programs in the postsecondary educational system.

Discussion: Graduate programs offered by for-profit institutions and graduate non-degree programs offered by public and nonprofit institutions are subject to the GE program requirements in the HEA. Given high and growing graduate borrowing levels, which often do not correlate highly with earnings outcomes, the protections of the GE rule are necessary for graduate students. That said, we also agree that there are some considerations, such as postgraduation training requirements, required before a program's impact on earnings can be realized that are unique to graduate programs. We discuss those considerations in the "Measurement of Earnings" section, below.

Changes: None.

Comments: One commenter thanked the Department for confirming that comprehensive transition and postsecondary programs are excluded from the D/E rates and EP measures.

Discussion: We thank the commenter for noting agreement with the exclusion of students in these programs from the calculation of D/E rates and EP measures under §§ 668.403(c)(6) and 668.404(c)(6).

Changes: None.

Comments: Commenters objected to measures where the program outcomes in the proposed regulations would be based on periods before those regulations were in effect, saying it would be unfair to sanction institutions under the eligibility measures based upon program and pricing decisions that could not be undone or modified now. These commenters claimed that the resulting metrics would not account for program changes made in the intervening years and would, therefore, not be useful to prospective students. Commenters suggested that it would be fairer to only use outcome measures for

informational purposes when the rates were based on periods before the regulations are in effect. Some commenters suggested that sanctions could not be based on retroactive periods without more explicit congressional authorization.

Discussion: The program information website and eligibility determinations based on past program performance, even performance that predates the effective date of the regulations, do not present a legal impediment to these regulations. A law is “not retroactive merely because the facts upon which its subsequent action depends are drawn from a time antecedent to the enactment.”¹¹⁴ This principle applies even when, as is the case with these regulations, the statutes or regulations at issue were not in effect during the period being measured.¹¹⁵ This principle has been confirmed in the context of the Department’s use of institutional cohort default rates.^{116 117} The courts in these matters found that measuring the past default rates of institutions was appropriate because the results would not be used to undo past eligibility, but rather, to determine future eligibility.¹¹⁸ As with the institutional cohort default rate requirements, as long as it is a program’s future eligibility that is being determined using the D/E rates and EP measure, the assessment can be based on prior periods of time. Indeed, the court in *APSCU v. Duncan* rejected this retroactivity argument with respect to the 2011 Prior Rule.¹¹⁹

Moreover, we believe that the program information website is of interest to current and prospective students, even when based on historical data, and provides helpful insight to students when comparing and selecting among program offerings. We further maintain that the transparency framework will be immediately useful to students, prospective students, institutions, and the public, by filtering out low-financial-value programs and enhancing competition among other programs.

Changes: None.

Comments: Some commenters believed it would be better to establish the financial value transparency

framework for all institutions and not use that information for eligibility purposes until better data becomes available over time to monitor the results and assess the program outcomes.

Discussion: The Department disagrees that available data are not suitable to the task of measuring gainful employment. The Department has now over a decade of experience assessing the quality of program level measures of earnings and debt outcomes and is confident that both the earnings premium measure and debt to earnings measure capture the relevant dimensions of program performance. As we discuss elsewhere in this rule and in the NPRM, we believe that the transparency framework is critical, but that the GE eligibility provisions created by this rule provide critical additional protections for students and taxpayers in career training programs.

Changes: None.

Potential Impacts

Comments: Some commenters suggested some contradiction in policy measures like the transparency and GE accountability provisions in the rule that could discourage students from public service careers while also rewarding public service through loan forgiveness at a later career point. Commenters also recommended excluding public service educational programs whose graduates would qualify for Public Service Loan Forgiveness to avoid decreasing the number of graduates in fields that are already experiencing supply constraints.

Discussion: As noted elsewhere, the goal of these regulations is to ensure programs are not leaving students with unaffordable debt or with no enhancement to their earnings. Programs should ensure their students’ do not need to borrow excessively, regardless of what repayment options may be available to them based on their career choices after graduating. In most cases, we expect that programs will serve both students likely to pursue public sector employment and students who will not enter the public sector, and all students should be protected from unaffordable levels of debt.

Changes: None.

Comments: Several commenters expressed concern that the GE program accountability framework would lead to the closure of smaller colleges and vocational schools serving students who may not thrive in traditional university settings. One of these commenters viewed the measures as discrimination against students who do not want a

traditional college education and who want to work in the service industries.

Discussion: The Department disagrees with the commenters. The calculation and application of the D/E measure and the EP measure do not vary based upon the size of the institution or the type of learning environment it provides in its programs. They only vary to ensure there are sufficient students in the data to calculate results. The effects of the rule are driven by whether a program provides sufficient financial value, and there are many small institutions whose programs pass these metrics as well as larger institutions that see their programs fail. We also disagree that the rules discriminate based upon the type of postsecondary experience sought by students. There are significant numbers of all types of programs that pass the GE measures as shown in the RIA. The commenters did not provide any evidence as to how the non-traditional nature of the program could be expected to affect either the amount of debt students take on or their earnings.

Changes: None.

Comments: One commenter claimed that the regulations would lead to students shifting from larger institutions to smaller institutions that do not participate in title IV, HEA programs. The commenter further claimed that non-participating programs do not need to maintain any basic standards and therefore students will not be protected if they attend those schools.

Several other commenters also suggested that students dependent upon Federal student aid could be harmed if some institutions continued to offer programs that lost eligibility to students that could afford them without Federal student aid. Some commenters noted that programs at risk of losing Federal student aid might also lose access to State grants and further erode student access to some lower earnings programs.

Discussion: The Department expects one outcome of these regulations will be an enrollment shift from low-financial-value to high-financial-value programs or, in some cases, away from low-financial-value postsecondary programs to non-enrollment. It is also possible that some students will shift from low-financial-value postsecondary programs to programs where they cannot obtain title IV, HEA aid, though such transfers will likely be limited by the lack of Federal aid available to students at such programs. There is limited information about the outcomes of students at non-participating programs, making it difficult to estimate the consequences of such transfers (although research cited in the RIA finds that among cosmetology programs, non-

¹¹⁴ *Reynolds v. United States*, 292 U.S. 443, 449 (1934).

¹¹⁵ *Career College Ass’n v. Riley*, No. 94–1214, 1994 WL 396294 (D.D.C. July 19, 1994).

¹¹⁶ *Ass’n of Accredited Cosmetology Schools v. Alexander*, 979 F.2d 859, 860–62 (D.C. Cir. 1992).

¹¹⁷ *Pro Schools Inc. v. Riley*, 824 F. Supp. 1314 (E.D. Wis. 1993).

¹¹⁸ See, for example, *Ass’n of Accredited Cosmetology Schools*, 979 F.2d at 865.

¹¹⁹ 870 F. Supp. 2d at 151–52.

participating programs have lower prices but similar licensure passage rates). However, the Department believes that the rule will lead to net benefits, as we expect that the availability of higher quality information about program-level student outcomes, and the loss of title IV, HEA eligibility by low value GE programs, will result in fewer defaults, higher earnings for students, and additional tax revenue for Federal, State, and local governments.

Changes: None.

Comments: One commenter argued that, in the NPRM, the Department promoted a false narrative that higher education is not a pathway to success for students and their families. This commenter worried that if we enact these rules, there will not be students qualified to fulfill workforce needs.

Discussion: The Department disagrees. As we noted in the NPRM, most postsecondary programs provide benefits to students in the form of higher wages that help them repay any loans they may have borrowed to attend the program.¹²⁰ We believe that all students benefit from the availability of information about a program's debt and earnings outcomes provided under the financial value transparency framework. Moreover, by only providing title IV, HEA funding to GE programs that meet the GE eligibility requirements, the Department is encouraging students to pursue career pathways in higher education that will result in them being gainfully employed. It will provide students a pathway to success within higher education that does not leave them unable to pay their debt or with earnings no greater than a comparable high school graduate.

Changes: None.

Comments: Many commenters expressed that, by denying title IV, HEA eligibility to failing GE programs, the GE regulations will limit school choice for students. These commenters argued that students should choose where to attend school without being deterred by a lack of funding. Commenters asserted that it is unfair to limit student choices for educational programs by using the GE program accountability framework, and that doing so will perpetuate an uneven playing field for the for-profit institutions. One commenter opined that the GE program accountability framework will drive up the cost of higher education because it will reduce the number of schools available and decrease competition.

Commenters suggested that a better approach would be to provide more

guidance and accept alternate measures of success for a GE program, such as graduation and placement rates, or establish more stringent requirements for those institutions with higher cohort default rates. Commenters asserted that graduation rates reported by the National Center for Educational Statistics (NCES) show that proprietary schools have higher graduation rates for first-time, full-time students for two-year programs of over 60 percent, compared to 52 percent for private nonprofits and 29 percent for public institutions.

Discussion: The Department disagrees. By implementing the GE program accountability framework, the Department is protecting students from attending programs that leave students with unaffordable debt or earnings not more than comparable high school graduates. As explained further above, we do not believe such programs meet the HEA requirements for participating in title IV, HEA as GE programs. Those programs must prepare students for gainful employment in a recognized occupation or profession, and the accountability framework adopted here is designed to implement the applicable statutory provisions with clear and administrable rules that test for earnings enhancements and affordable debt. In addition, the GE program accountability framework, rather than limiting school choice, will improve the choices available to students and, at the same time, protect the interests of taxpayers and the Federal Government.

For several reasons, the Department does not agree that the rule will cause increases in tuition by reducing the number of educational options available to students. The GE accountability provisions of the rule, in part, target programs with high debt relative to earnings. We expect the primary impacts of the rule to be (1) encouraging institutions with high D/E programs to reduce their tuition or arrange for their students to receive greater grant support to reduce borrowing, and (2) making ineligible for participation in title IV, HEA student aid those GE programs that have particularly high costs to students, leaving more affordable options in other programs with better outcome measures. More generally, the fact that so much variation in debt exists across programs that are in similar fields with similar earnings levels suggests strongly that competition across such programs for students may play a limited role in keeping tuition low.

We expect that programs that are low performing under the framework will take steps to improve, to avoid a loss of title IV, HEA eligibility. As shown in the

RIA (see Tables 4.25 and 4.26), most students who enroll in a GE program projected to fail the D/E rates or EP measure have better options available to them in a similar field nearby or, possibly, at the same institution. On average, these alternative options leave graduates with 43 percent higher earnings and 21 percent less debt.¹²¹ Accordingly, rather than restricting the educational and professional choices of those considering career-focused programs and causing cost increases due to reduced competition, we believe the GE program accountability framework will lead to overall improvement in the career program options available to students and in the financial outcomes for those students.

Nor has the Department ignored the value of student choice. The financial value transparency framework will provide average education debt and earnings information about degree programs offered at nonprofit and public institutions to help students and families make informed choices, while the GE program accountability framework will ensure that GE programs are meeting eligibility thresholds in accord with applicable statutes. Again, the GE program accountability framework is based on the GE provisions of the HEA that differentiate between career training programs and other eligible programs by conditioning the title IV eligibility of career training programs on their meeting the gainful employment requirement. We believe it is appropriate to set eligibility thresholds for these programs to ensure they meet the HEA requirements, and that these thresholds will promote better outcomes for students and encourage institutions to improve the outcome measures for marginal programs. By providing equivalent information about programs not subject to the GE eligibility requirements, the financial value transparency framework will promote better comparisons of comparable programs offered at different institutions for students looking at multiple institutions.

We also disagree with suggestions by commenters to adopt measures such as graduation or placement rates instead of the D/E rates and EP measures or to create stronger conditions around cohort default rates. While we agree that graduation rates are an important piece of information, they are insufficient for ensuring that programs prepare students for gainful employment in a recognized occupation. The measures in the GE

¹²¹ See the section in the RIA titled "Alternative Options Exist for Students to Enroll in High-Value Programs."

¹²⁰ 88 FR 32300, 32306 (May 19, 2023).

program accountability framework are based upon students who graduate and received title IV, HEA aid, and the data included in the NPRM and this final rule show that even when looking only at graduates, there are too many programs that leave students in a situation where they are no better off than if they had never attended postsecondary education or they have debt that they cannot afford to repay. Restricting our analysis to graduation rates would overlook these concerning results. Broadly, we do not view a high completion rate as evidence that a program prepares its students for gainful employment if most graduates struggle in the labor market or cannot afford their debt.

Placement rates exhibit similar shortfalls. While they can be useful indicators of results, not every program is directly tied to a specific set of occupations and, thus, such measures may not always be appropriate. Moreover, calculating placement rates is burdensome and time consuming for institutions compared to the GE program accountability metrics. Further, we do not believe that job placement is proof that a program is preparing students for gainful employment in a recognized occupation, if graduate earnings are no better than if they had never attended postsecondary education or if they nonetheless have debts they cannot afford.

Regarding default rates, the Department is concerned about the negative effects of default on borrowers, so we are taking steps to lessen the likelihood of default, even if the institution does nothing to improve its offerings. For instance, in the final rule improving income-driven repayment,¹²² we instituted regulatory provisions that would allow for the automatic enrollment into income-driven repayment of borrowers who go at least 75 days without making their scheduled payment and who have granted us the approval for the disclosure of their Federal tax information from the IRS. We have also created the new Saving on a Valuable Education (SAVE) plan, which increases the amount of income protected from payments, which will give more at-risk borrowers a \$0 payment and prevent many from defaulting. While these provisions provide critical benefits for borrowers, they underscore the importance of additional measures of program outcomes beyond default rates to assess whether programs are preparing students for gainful employment.

Changes: None.

Demographics and Outcomes

Comments: Many commenters raised concerns about how the demographics of students at programs could lead to unfairness in the calculation of earnings or debt at programs with diverse student bodies. For example, several commenters raised the issue of wage discrimination that affects the earnings of racial and ethnic minority students and women. Because of this labor market discrimination, some commenters argued that programs that serve widely discriminated-against students and communities will be disadvantaged in the calculation of earnings relative to programs that serve fewer students from communities facing discrimination. Several commenters also claimed that the high school earnings threshold reflects in large part the gender composition of the high school completer workforce in each State, which, if largely male, may not be an appropriate comparator for postsecondary programs that predominantly graduate women. Many commenters argued that schools that educate a large population of low-income or low-wealth students will have higher debt-to-earnings ratios, since such students are more likely to borrow. Another commenter suggested that the Department should apply a “Pell Premium” to institutions with high populations of low-wealth students. However, several commenters also suggested that institutions play a strong role in the job opportunities their graduates can obtain, even if student demographics can have some role in the outcomes across programs.

Discussion: We agree that systemic discrimination may affect the need for some groups of students to borrow and may affect their earnings after graduation. Still, we do not believe that the demographic makeup of a program’s students sufficiently influences whether the program meets this final rule’s minimal thresholds for financial value such that the Department should alter or abandon the regulations that we adopt here.

The Department addresses this concern in the RIA, the basic points of which we reiterate and discuss here. In the RIA, the Department provides evidence indicating that programs and institutions play an important causal role in determining student outcomes, more so than student demographics. We first present regression analysis (Tables 4.22 and 4.23) showing that institutional and program factors (credential level, control, institution fixed effects) explain a great deal of the variation in program outcomes. Adding student

demographics on top of these variables does not explain much additional variation in outcome (as measured by increase in R-squared) (Tables 4.22–4.23). Second, we show that program-level differences in students’ family income background is only modestly correlated with the EP measure, and that there are many programs that pass at every level of family income (Figure 4.3). The same is true among programs with similar gender and racial composition (Table 4.24). Third, evidence from our compliance oversight activities indicates that some institutions aggressively recruit women or students of color into programs of substandard quality and claim that the resulting poor outcomes are because of the alleged “access” the program provides to their students. Finally, the closure of a poor-performing program is not likely to affect students’ access to a similar program with better outcomes. More than 90 percent of students have at least one transfer option within the same two-digit CIP code, credential level, and geographic area (Table 4.25). We also note that the research literature on this topic likewise concludes that factors related to institutions and programs are stronger predictors of student outcomes than the demographic characteristics of students. On that score, please consult the numerous citations to this literature in the “Need for Regulatory Action” section of the RIA.

Furthermore, in designing the D/E rates and EP measures, the Department included several features to limit the influence of student demographics on these financial value metrics. In the measurement of program debt under § 668.401(b)(1)(i), for example, we cap individual student borrowing at the direct costs charged by the program excluding borrowing for living costs. Low-income students tend to borrow more for non-tuition and fee expenses than do high-income students; therefore, this cap at the total cost for tuition, fees, and books should mitigate concerns that programs will be penalized for enrolling large numbers of low-income students.¹²³ Further, an analysis by New America suggests that capping debt at the total cost for tuition, fees, and books will have a particularly large impact for programs at Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions, Tribal Colleges and Universities, and other Minority Serving

¹²³ See, for example, Dancy, Kim & Barrett, Ben (2018). *Living on Credit? An Overview of Student Borrowing for Non-Tuition Expenses*. New America (<https://www.newamerica.org/education-policy/reports/living-credit/>).

¹²² 88 FR 43820 (July 10, 2023).

Institutions (MSIs), in terms of increasing the number of programs at these institutions that pass the metrics.¹²⁴

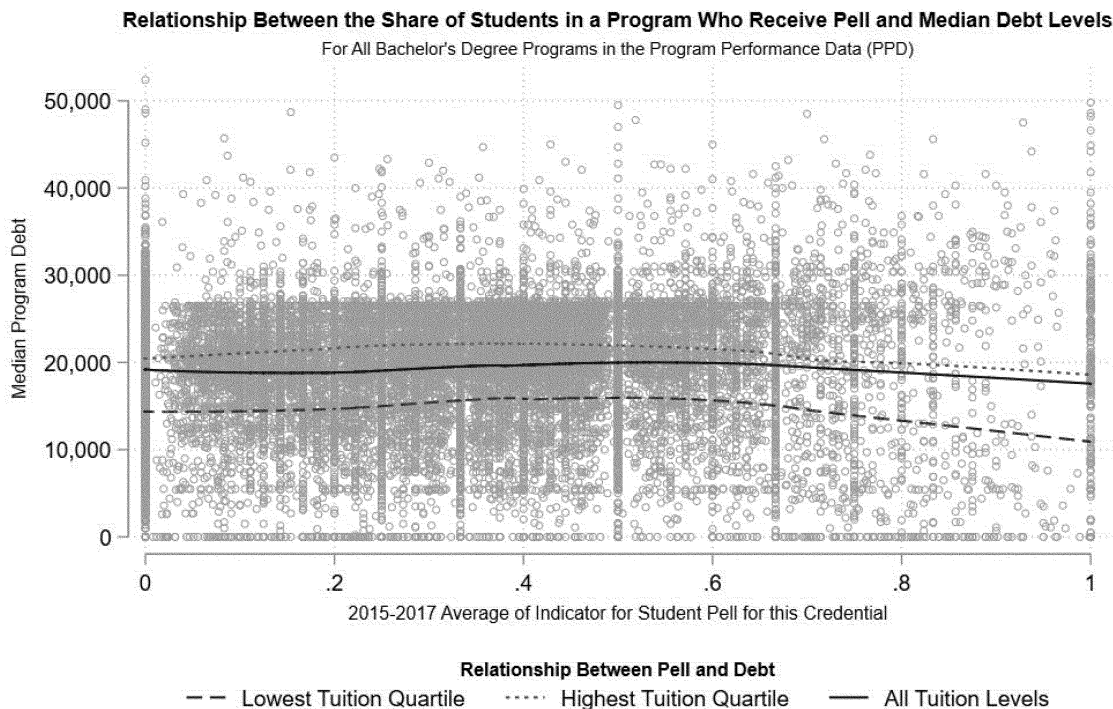
Even using the data in the 2022 PPD, which does not have that cap applied (since the cap will rely on institution-level reporting not yet available to the Department), programs with small proportions of students who receive Pell Grants (which proxies for socioeconomic status) have median student debt levels that are similar to

programs serving large shares of Pell students. In Figure 1.1, we show the relationship between median program debt and the share of Pell students using the PPD. As the share of Pell students increases (moving from left to right on the graph), the average median program debt does not increase (the average of the individual programs' median debt levels is shown in the dark line); rather, it remains similar. To illustrate that institutions do influence borrowing levels, in the same figure we show the

average median debt levels for institutions with higher tuition levels (the highest quartile of tuition, with the average depicted by the dotted line) versus those with lower levels of tuition (those in the lowest quartile of tuition, depicted by the dashed line). The figure shows that tuition levels affect borrowing levels substantially, whereas the family income background (proxied by the percent of student receiving Pell grants) of students does not.

BILLING CODE 4000-01-P

Figure 1.1: Median debt and Pell receipt among Bachelor of Arts (BA) programs



BILLING CODE 4000-01-C

Related to potential issues raised about differences in the gender compositions of programs and high school graduates in the State, adjusting thresholds poses several challenges, including practical feasibility. As described in more detail below, attempting to create program-specific metrics would be very complex and lead to inconsistent standards across programs. As well, standards might need to continually change as the gender composition of programs change,

potentially adding undesirable volatility to program outcomes.

Changes: None.

Comments: Working from concerns about the role of demographics in the comparison of metrics across programs, commenters suggested a number of potential solutions. One commenter suggested that the earnings information provided on the Department's program information website should note salary discrepancies by gender and race. One commenter recommended the Department disaggregate high school

earnings data by demographic characteristics when an institution can demonstrate a predominate demographic or population being served by its programs or field of study. A few other commenters, relying on an estimate of return on investment from a think tank analysis,¹²⁵ suggested adjusting the threshold down by 15 percent to account for variances in earnings levels due to demographic differences. A few commenters suggested using demographic adjustments for labor market

¹²⁴ See Caldwell, Tia & Garza, Roxanne (2023). Previous Projections Overestimated Gainful Employment Failures: Almost All HBCUs & MSI Graduate Programs Pass. New America (<https://www.newamerica.org/education-policy/edcentral/ge-failures-overestimated/>).

¹²⁵ The referenced report is available here: <https://freopp.org/accountable-or-not-evaluating-the-biden-administrations-proposed-gainful-employment-framework-a49231683263>.

discrimination, similar to those used in the Bipartisan Policy Center's (BPC) methodology for estimating the return on investment (ROI) for college enrollment.

Discussion: We appreciate the suggestions provided by commenters. For website disclosures, the Department is interested in providing data to students that will help them make informed decisions and to institutions that will help them identify and remove the potential barriers to opportunities for all students to achieve success. The Department will carefully consider the best way of providing this information to students and institutions, including contextual information about the influence of factors such as race and gender discrimination on earnings levels, taking into account the results of consumer testing.

Related to high school earnings, the EP threshold is based on an estimate of State-level median earnings of individuals aged 25 to 34 who have only a high school diploma or GED. Further adjustment to this threshold, such as using a program-specific statistical adjustment to better match the demographics of students completing a given program to the composition of high school graduates in a given State, poses several challenges. An important constraint on this approach is its practical feasibility. To implement the approach, one would need to measure high school median earnings separately for each demographic subgroup of interest. If we only started with the five race and ethnicity groups on which the Office of Management and Budget (OMB) requires reporting and added two sex-at-birth categories, we would need to estimate median earnings for ten subgroups within each State. In many States there would be too few individuals in ACS data to produce a reliable measure, so different groups would need to be combined or other methods of adjustment would need to be employed, thereby requiring potentially arbitrary methodological choices. To compute a program-specific threshold, presumably one would create a weighted average of these subgroups, where the weights would correspond to the share of completers in the program. Again, this could be quite complex and create different standards that programs must meet for eligibility. Especially in small programs, changes in the demographic composition of programs could result in different earnings thresholds from year to year. This could add undesirable volatility to program outcomes under the rule.

With respect to establishing a 15 percent variance to account for

disadvantaged groups, we appreciate the suggestion, but there are numerous issues with the commenter's methodology that preclude a sound basis for adjusting the rule by an amount generated by that analysis. This includes several self-acknowledged reasons why the commenter's methodology systematically overestimates or underestimates ROI for different types of programs, and makes assumptions that students' earnings trajectories relative to their peers do not change over time. In addition, the commenter's attempt to create counterfactual wages relies on adjustments made on very broad educational credential by field of study groups that do not reflect specific programs well.

The Department has considered different methodologies for calculating a median high school earnings threshold in each State, including an option (using only those individuals with a high school degree working year-round) that would have used an earnings threshold approximately 20 percent higher.¹²⁶

The BPC's ROI model includes a "discrimination adjustment" based on earnings gaps in the overall population of college graduates. Earnings of female graduates, and graduates from underrepresented minority racial or ethnic groups, are adjusted upward to match the earnings of white male college graduates. If applied to a program's earnings outcome measure, this statistical adjustment would misrepresent the true median earnings of graduates from a given program by inflating the median salary for programs enrolling large shares of women and underrepresented minorities. Such an adjustment could potentially misrepresent a student's potential earnings, and ability to repay their debt, for a given program, which are important datapoints within the financial value transparency framework. If applied to State-level EP thresholds of median high school earnings, this statistical adjustment is again likely to cause more year-over-year uncertainty for programs serving a demographic population that is dissimilar from the State-level population of high school graduates in the labor force, due to small n-sizes of these groups.

Finally, we note again that as shown in Tables 4.22 and 4.23 of the RIA and elsewhere in this rule, program demographics do not play an outsized role in influencing the debt and earnings-based outcomes measured in the final rule. In light of these factors,

we believe the methodology for setting thresholds based on State-level high school earnings described in this rule is better than alternative approaches and sets a reasonable benchmark for the earnings outcomes of all programs.

Changes: None.

Comments: Several commenters suggested that the Department should include separate provisions for underserved and under-resourced institutions such as HBCUs and other MSIs. These commenters contended that the unique circumstances of HBCUs and MSIs should be considered important factors in assisting both students and institutions. The commenters stated that the Department can do this by providing technical assistance to these schools instead of loss of eligibility if programs fail the D/E rates or EP measure, helping to achieve compliance.

Discussion: While we are sensitive to the additional burden associated with implementing these regulations, we do not believe an exception should be made for HBCUs and other MSIs. As for the financial value transparency framework and the acknowledgment provisions therein, we believe the students at HBCUs and other MSIs are just as deserving of access to useful and comparable information about programs, including information that may be necessary to prevent them from accumulating unaffordable debt. As for the GE program accountability framework, we similarly believe that consumer protection and providing information to highlight the value of programs is important for all students who attend GE programs. As stated above, we maintain that any burden on institutions to meet the reporting requirements is outweighed by the benefits of the transparency and accountability frameworks of the regulations to students, prospective students, their families, taxpayers, and the public at large.

Changes: None.

Comments: Many commenters expressed additional concerns about the impact of the rules on institutions that educate large numbers of low-income and minority students. For example, several commenters equated the student acknowledgment requirements to public shaming of institutions that educate such students. Several other commenters contended that, as a result of the rules, institutions will discriminate against students with lower incomes who do not have the capacity to pay for their program with their own money. These commenters believed that schools are likely to admit students who can be persuaded to borrow private student loans, who do

¹²⁶ See "Alternative Earnings Threshold" in the "Alternatives Considered" section of the RIA.

not require accommodations for disabilities, and who enroll in training for fields that are likely to result in higher incomes. This means, according to these commenters, that women, people of color, people with disabilities, and LGBTQ+ individuals will be less likely to gain access to these higher education programs.

Discussion: We do not agree that the student acknowledgment requirements constitute a public shaming of institutions that serve low-income and minority students. The acknowledgments are delivered to the Department through its website, and they are obtained from individual students with respect to particular programs—more specifically, title IV eligible programs that do not lead to an undergraduate degree and that are associated with high debt burden, as well as GE programs that are at risk of losing title IV, HEA eligibility based on measures of high debt burden or no enhanced earnings. The acknowledgments are not obtained from the public at large nor are they associated with the institution as a whole. Moreover, as further discussed in response to a comment above, our analysis of the PPD shows that programs with small proportions of students who receive Pell Grants (which proxies for socioeconomic status) have similar median student debt as programs serving large shares of Pell students.

Moreover, the Department believes that the GE program accountability framework will help protect all individuals including women, people of color, people with disabilities, and LGBTQ+ individuals from entering programs that do not prepare students for gainful employment. The lack of title IV, HEA aid at such programs will help students to avoid failing GE programs, which will ultimately help maximize their educational investment. To help prevent institutions from encouraging students to substitute private loans for Federal loans, the D/E rates measure counts all student borrowing including institutional and private loans in the median debt measure. In effect, then, institutions do not receive an advantage on that metric for concentrating on students with access to private lending, which was a matter of concern to some commenters.

Changes: None.

Alternative Accountability Metrics

Comments: One commenter proposed that the Department use repayment rates as an alternative accountability metric to monitor debt affordability. This commenter noted that in their analysis of College Scorecard data, they

identified many online schools where less than 20 percent of borrowers make any progress in lowering their loan principal; however, these programs pass the D/E rates and EP metrics. This commenter recommended penalties for programs where many students do not make progress paying down their principal. Specifically, the commenter suggested the Department consider mandatory disbursement delays, mandatory reduced loan maximums (e.g., 20 percent less annual loan maximums), or limiting borrowing for one category of costs.

Discussion: The Department agrees that measuring the realized repayment rates of borrower cohorts from particular programs may provide valuable information on borrower outcomes. As provided in § 668.43(d)(1)(vii), through the program information website, we will provide the loan repayment rate for students or graduates who entered repayment on Direct Loans. The Department currently lacks sufficient evidence, however, to design accountability thresholds that would tie eligibility to whether a program's repayment rate exceeded a particular threshold.

Changes: None.

Comments: A few commenters suggested that we assess programs based on a tuition-to-earnings ratio rather than a debt-to-earnings ratio. These commenters believed this approach would treat programs with similar prices and earnings outcomes comparably, regardless of the share of students with debt.

Discussion: We believe it is reasonable to consider whether students' labor market outcomes justify the amount they borrow, as well as any educational expenses they pay using other funds. This rule will generate new program-level data that captures the total debt students borrow to attend programs, which will provide students with relevant information about program outcomes. Since no data on program-level tuition exists, we are not able to calculate a tuition-to-earnings ratio. We focus instead on the direct costs to attend a program that students finance with student loans. This approach reflects the Department's natural interest in Federal loans being repaid, and its concerns that excessive borrowing to attend postsecondary education may lead to financial consequences including default that undermine the goals of title IV, HEA programs in promoting economic mobility.

Changes: None.

Comments: One commenter noted that nursing education is composed of

various programs and specializations ranging from practical nursing degrees to doctoral degrees. The current GE metrics may not differentiate between the levels of nursing education and varying incomes. For example, the employment outcomes and debt-to-earnings ratio for a nursing assistant program may differ significantly from those of a four-year Bachelor of Science in nursing program. According to the commenter, incomes vary widely in individual fields in the nursing profession and a rigid formulaic measure may result in unfair and inconsistent outcomes. The commenter further stated that GE metrics prioritize financial indicators, such as earnings and debt, while overlooking other valuable outcomes specific to nursing. The commenter contended that the Department should consider factors like patient outcomes, job satisfaction, and advancement opportunities. The commenter believed that these aspects are also important in assessing the overall quality and value of nursing programs.

Discussion: The EP and D/E metrics are measured for programs that are defined based on credential level and CIP codes. We expect these measures will indeed differentiate between programs that train nurse assistants and BS programs in nursing, unless the BS program graduates end up finding employment as nurse assistants. Regardless, the GE measures are meant to determine whether graduates of career training programs leave their students with enhanced earnings or affordable debt. These are minimum standards to ensure students are not financially harmed by completing an education program. The additional factors specified by the commenter are important but not measured by or reported to the Department. Therefore, we are unable to report on these measures.

Changes: None.

Other Comments

Comments: A commenter expressed concern that if we promulgate these GE regulations, there is nothing to stop the Department from enacting more restrictive metrics for all programs.

Discussion: Although D/E rates and the EP measure will be calculated for informational purposes for all programs, we note that the use of the D/E rates and EP measures in this final rule to determine continuing title IV, HEA eligibility for GE programs is pursuant to the statutory authority specific to those programs.

Changes: None.

Comments: Several commenters noted that proprietary schools provide value and economic strength to the country even though they do not receive the State and Federal support provided to public and nonprofit institutions that subsidize the education costs for students. The commenters said that students taking programs at trade schools should have the same opportunities to obtain Federal loans as students attending other institutions of higher education. Commenters also questioned whether programs offered at public and nonprofit institutions in fields such as performing arts, education, leisure, and hospitality provided gainful employment compared to the lower program costs and many jobs available to graduates from cosmetology programs.

Discussion: We agree that many factors go into program costs and post-graduate earnings for the choices students make when selecting institutions, programs, and careers. The regulations measure education debt and earnings for the student graduates, and the education debt itself is tied to the program costs that might or might not be subsidized from other sources. Other factors such as program length also impact those measures. Regardless of those factors, the average education debt for a program is relevant because it reflects the direct obligation that the student is expected to pay, while the average earnings provides some measure of the graduate's ability to do so.

Changes: None.

Comments: Some commenters noted that many graduates of the shorter programs offered at proprietary schools can get licensed in professions with work that provides those graduates and society with immediate benefits. One commenter acknowledged that some for-profit beauty schools may underperform, but surmised that students take cosmetology programs with different goals, plans and ambitions, such as working part-time instead of full time. A number of commenters criticized the eligibility outcome measures as being targeted to cosmetology programs and asserted that the proposed regulations are intended to drive student enrollments away from cosmetology programs and into other fields such as medical and dental. Commenters strongly objected to measures where Department estimates show the regulations could eliminate two-thirds of the cosmetology programs offered at proprietary institutions. Some commenters noted that institutions have little voice in factors that may be reflected in the lower earnings for cosmetology programs such as part time

work or unreported income. Some commenters cautioned that programs failing the earnings tests may close and students may face limited choices to enroll in more expensive degree programs or find comparable cosmetology programs in less convenient locations. Other commenters said that many cosmetology graduates seeking full time careers easily get well-paying jobs even before they develop dedicated clientele, while others may do little beyond maintaining their licenses.

Discussion: These measures for debt and earnings are comparable for all programs under the transparency framework and eligibility measures. In general, this means that to keep the education debt affordable for the graduates, programs with lower earnings will have lower costs. Graduates choosing not to work full-time or providing volunteer services in addition to working part-time still are faced with the obligation to repay the education debt associated with their program. The regulations provide the average education debt and average earnings for program graduates without adjustments for any part-time work, and students should consider that information when evaluating career options. Institutions offering GE programs that do not meet the eligibility thresholds may search for better options for their students that effectively reduce the education loan debt or lead to better earnings outcomes. A more detailed discussion about unreported income from cosmetology program graduates is addressed separately in the "Tipped Income" sections here and in the NPRM.

Changes: None.

Comments: Some commenters suggested earnings outcomes could be impacted due to student athletes who might underperform in academic engagement, impact retention and graduation rates, and not be gainfully employed.

Discussion: The Department has no information that suggests the commenters' assertions that student athletes are likely to have lower academic engagement and thus lower earnings might be correct. The metrics of the rule are based on students that complete a program, however, so the commenters' concerns about retention and completion are not likely to be relevant. Regardless, the Department expects institutions to serve all of its students well and to meet the minimal standards set by the rule.

Changes: None.

Definitions—§ 668.2

General Comments

Comments: Several commenters stated that the definitions are unclear and do not adequately define terms in ways that can be operationalized by institutions. Commenters contended that previous iterations of the GE rule have shown that many definitions are so confusing that implementation for schools became overwhelming. These were general assertions, and no examples were given to the extent comments addressed specific definitions, they are addressed in the corresponding section.

Discussion: We believe the definitions are clear. We have taken care to define terms precisely in this final rule and do not anticipate widespread confusion. In addition, as we did when issuing the 2014 Prior Rule, we will again provide clear guidance and training to assist postsecondary institutions in complying with the new regulations.

Changes: None.

Classification of Instructional Program (CIP) Code

Comments: Many commenters asserted that the proposed regulation's definition of the CIP Code to consist of six-digits is not appropriate for the purposes of the transparency and accountability regulations. Commenters offered several at times conflicting reasons for using alternative approaches. One commenter noted that the six-digit CIP code does not adequately distinguish among different levels of program success at different locations of the institution. Another commenter cautioned that the four-digit CIP code captured several different six-digit programs offered at a school, and that if the program defined at a four-digit CIP level failed then all the programs at the school would fail and the school might need to close.

On the other hand, other commenters suggested the definition of a CIP code should consist of four-digits to increase the number of students covered by metrics under the rule, or alternatively to use the six-digit CIP but to "roll-up" programs to the four-digit level when doing so would avoid too few students at the six-digit level programs. Some commenters noted that few four-digit programs had multiple six-digit programs within them, and in those cases, the different six-digit programs rarely had different financial value outcomes. This, they said, suggested there would be little granularity lost in using the four-digit CIP level to define programs, and would increase coverage of the rates. Finally, one commenter

expressed appreciation for the Department's decision to use 6-digit CIP codes and requested the Department to re-release the dataset included with the NPRM with a 6-digit CIP code versus the currently published 4-digit CIP code data to aid in understanding institutions' performance with these new measures.

Discussion: We appreciate commenters' views on both sides of this issue. There is a tradeoff between granularity of how specifically programs' performances are measured, and the coverage of metrics due to minimum n-size restrictions discussed elsewhere. As we note in the RIA, we estimate that metrics using a 6-digit CIP with the 4-year completion cohort roll-up for programs with few completers over 2 years will be available for programs enrolling over 80 percent of title IV, HEA recipients. While also rolling up programs to the four-digit level could allow even greater coverage, the potential gains are small, and it is possible that some programs (measured at the six-digit level) that should be deemed passing are combined with larger failing programs and end up failing. We put more weight on avoiding an inappropriate sanction on a passing program, and so prefer to define programs at the six-digit level.

Although the Department considered treating each additional location offering the same combination of six-digit CIP code and credential level as a separate program, we determined that doing so would further reduce the number of programs with a sufficient number of completers to be evaluated, and the gains in granular coverage may not be justified. This is, in part, due to an added dimension of complexity that not all locations are well aligned with the organizational units of institutions with which students engage in pursuing an education, and the mapping between locations and such units differs widely across States. The Department might revisit the issue of program classification in the future, for example to assess student outcomes more granularly across different campuses in some State systems or in online programs.

The Department does not anticipate being able to rerelease the information published with the NPRM at the six-digit CIP level due to constraints in our ability to obtain earnings data.

Changes: None.

Office of Postsecondary Education Identification (OPEID) Code Level

Comments: A few commenters argued that, in defining a "program", the Department should use the eight-digit

Office of Postsecondary Education identification number (OPEID) since it because it more granularly identifies the institution where a student receives an education. The commenter asserted that disaggregated data would afford students a clearer understanding of the quality of their specific institution. Also, the commenter stated that accreditors and State regulators view institutions with distinct 8-digit OPEID numbers separately and so using the 8-digit OPEID would align data across the triad.

Discussion: The Department agrees with these commenters that it would be desirable to be able to track program performance at separate locations of colleges with multiple locations rather than reporting them together under a single six-digit OPEID campus. Currently, however, eight-digit OPEID locations do not correspond neatly to the separate components of an institution that students interact with to participate in their education programs. Moreover, the Department must balance the competing interests of specificity of data and having enough completers in a cohort group to calculate rates. Additional sub-division of completer groups would lead to some programs falling short of 30 students in the 4-year cohort, resulting in rates and data being unavailable for those programs. We believe that variation in the same program offered by the same institution at different locations would be too small to justify the loss of rates for programs that fall short of the 30 completer n-size requirement.

Changes: None.

Cohort Period

Comments: One commenter stated that, for programs that prepare pilots, student outcomes should be measured under the GE regulations after students have completed the credential and worked for the airlines at least 2 to 3 years. The commenter noted that the proposed GE outcomes measures could negatively impact flight schools.

The commenter proposed adding a new paragraph to the definition of "cohort period" that reads: "For a program whose students are required to complete post-graduation flight hours pursuant to the Federal Aviation Administration (FAA) standards to qualify as an Airline Transport Pilot (ATP) and where a majority of the graduates are pursuing an FAA ATP certification, the sixth and seventh award years prior to the award year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings threshold measure are

calculated. For this purpose, the institution must provide a certification that a majority of its graduates pursue completion of the required FAA certified flight hours to work as an FAA Certified ATP."

The commenter also recommended adding another paragraph to the same definition of "cohort period" that reads: "For a program whose students are required to complete post-graduation flight hours pursuant to the Federal Aviation Administration standards to qualify as an Airline Transport Pilot ('ATP') and where a majority of the graduates are pursuing an FAA ATP certification, the sixth, seventh, eighth, and ninth award years prior to the award year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings threshold measure are calculated. For this purpose, the institution must provide a certification that a majority of its graduates pursue completion of the required FAA certified flight hours to work as an FAA Certified ATP."

Discussion: The Department declines to add the proposed language. We are committed to reviewing our own internal data and processes to collect, analyze, and make program eligibility determinations based on the soundest data available to us. We are concerned that providing program specific carve-outs that have not been evaluated using the Department's internal data and processes would cause the GE metrics to be inconsistent and ineffective.

Changes: None.

Earnings Threshold

Comments: None.

Discussion: The proposed definition of "earnings threshold" referred to a "Federal agency with earnings data" as the basis for determining median earnings for purposes of calculating the earnings threshold, however our proposed description of the provision in explained that "[u]sing data from the U.S. Census Bureau, the Department would also calculate an earnings threshold. . . ." ¹²⁷

Change: We have clarified the definition of "earnings threshold" to provide that median earnings are determined based on data from the Census Bureau.

Institutional Grants and Scholarships

Comments: One commenter stated that the definition is not grammatically correct and should be improved through technical, non-substantive edits.

¹²⁷ 88 FR 32300, 32332 (May 19, 2023).

Discussion: The Department agrees with the commenter.

Changes: The Department has updated the definition to read: “Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student’s institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver.”

Student

Comments: Several commenters believed that defining “student,” for purposes of these regulations, to include only title IV, HEA recipients, would undermine the quality of data that the Department would use to calculate the D/E rates and EP measures for programs with significant numbers of students who did not receive Federal student aid. One commenter proposed to expand the definition of “student” to include graduates who have not received any title IV, HEA assistance for enrolling in a program, noting that in some years, 10 to 20 percent of the commenter’s institution’s graduates do not receive title IV, HEA funds. The commenter contended that it is unfair that a measure based on graduates’ median debt excludes graduates who did not receive title IV, HEA assistance. One commenter suggested that, given the reporting proposed, logistical hurdles in adding these graduates to the cohorts are easily overcome.

Discussion: These rules provide a framework to provide financial value transparency information to students and to determine the eligibility for students to receive Federal student aid at career training programs. It is reasonable to base this eligibility on measures of the outcomes of students who receive that aid. Similarly, for non-GE programs the Department seeks to provide relevant information to students regarding the outcomes of programs for students receiving title IV, HEA assistance. This will help students who need to borrow to attend non-GE programs to make an informed decision and, where applicable, hold GE programs accountable to increased oversight and guardrails.

Changes: None.

Title IV Loan

Comments: One commenter recommended that the Department omit the “title IV loan” definition or, if the Department believes that it is crucial to define the term for these regulations, use the existing defined term of “Direct

Loan Program loan” at § 668.2(b).¹²⁸ The commenter contended that the proposed definition is incomplete and not aligned with actual statutory provisions, which could be misleading and confusing. The commenter noted that, although new Federal Family Education Loan Program (FFELP) and Federal Perkins (Perkins) Loan Program loans are no longer being originated, these loans still exist and should not be excluded from the definition of “title IV loan.” The commenter cited, as examples, §§ 668.403(e)(1) and 668.404(c)(1), in which the Department refers to “title IV loans” as including Perkins and FFELP.

Discussion: The Department agrees with the commenter. We can rely on the definition of Direct Loan Program loan in preexisting regulations, and we agree that, to avoid confusion, it is helpful to use consistent terminology in our regulations.

Changes: The Department has revised references to “title IV loan” to “Direct Loan Program” loan throughout the final rule’s regulatory text.

Comments: One commenter suggested that, in calculating administrative burden, the Department should consider the administrative burden of all the proposed rules together, not individually.

Discussion: The Department took great care to analyze the impact of the proposed regulations. The Department has separated the GE and Financial Value Transparency Framework topics from the other rules covered in the NPRM. We, therefore, updated the RIA to reflect that, as well as to reflect changes we made from the proposed rules to these final rules.

Changes: None.

Measurement of Earnings

Timing of Earnings Measurement

Comments: One commenter supported the Department’s proposal to measure students’ earnings for the calendar year three years after graduation, observing that the proposed interval will give students time to establish normal earning levels and will allow for meaningful comparisons of debt and earnings outcomes between programs.

Discussion: We thank the commenter for their support.

Changes: None.

Comments: Many commenters expressed concerns over the timing of earnings measurement. First, many expressed concerns that three years is too little time from graduation to allow

for earnings to grow enough to be a fair representation of the earnings return to pursuing a degree in their field of study. Commenters noted that, in some cases, fields with lower initial earnings can end up having higher lifetime earnings. Others believed that we should account for the full lifetime earnings that flow from the benefit of a degree. Some commenters suggested that students without family members to advise them to consider other factors might be more swayed by the short-term earnings information provided as part of the financial value transparency framework.

By contrast, others argued that this three-year lag between when students graduate and when their earnings are measured is too long to fairly characterize the current quality of the program at the moment any sanctions might be levied.

Discussion: Because the benefit of some educational investments may take time to manifest, real-time assessments of educational program performance face a tradeoff between allowing enough time to pass to produce an accurate measure of the benefits and assessing those outcomes quickly enough that they are likely to reflect the current performance of a program. We agree that trusted resources such as family members can provide important assistance in college decisions, and we believe that the information produced from this rule will aid the decision making of students and their families. We are not aware of evidence that supports the argument that students without family members on which to rely will systematically make differential decisions in the way suggested by the commenter.

We believe a three-year lag in measuring earnings, with longer periods for programs documented to have exceptionally high earnings growth due to government-imposed limits on early career earnings capacity, strikes this balance. Data from the Census’ Postsecondary Employment Outcomes (PSEO) project shows that earnings levels measured shortly after graduation are very highly correlated with longer term measures.¹²⁹ The correlations of programs’ 1-year and 5-year post-graduation earnings measures with 10-year program median earnings are 72 and 89 percent, respectively (a 3-year earnings measure is not available in the PSEO, but it is reasonable to expect its correlation with longer term earnings to be between the 1- and 5-year measures). Moreover, according to administrative Department data on median debt levels

¹²⁸ Under 34 CFR 668.2(b), a “Direct Loan Program loan” is a loan made under the William D. Ford Federal Direct Loan Program.

¹²⁹ These data are available at https://lehd.ces.census.gov/data/pseo_experimental.html.

for each program, programs' median debt levels evolve relatively slowly—the correlation of program median debt levels for the 2016–2017 and 2021–2022 cohorts is about 0.96. In general, then, information on past cohorts' debt and earnings outcomes are likely to be highly relevant for predicting outcomes of future cohorts.

Changes: None.

Post-Graduate Training Requirements

Comments: Several commenters noted that recent graduates who engage in apprenticeships and other types of probationary or training periods, often required by the State before students can practice independently, earn lower wages in those initial years as compared to later years. The specific programs that commenters pointed to include clinical psychologists; marriage and family therapists; clinical counselors; social workers; and veterinarians. Other programs, especially in medicine, have residency requirements. In other cases, commenters noted that careers in their field often involve graduates running their own business, which requires time to build out a steady clientele and suppresses initial earnings.

One commenter suggested that, in determining which programs should be eligible for a longer earnings horizon, the Department should consider whether (1) the relevant field requires multiyear post-degree supervision for licensure (noting the possibility of creating competing State and Federal regulatory frameworks); and (2) a large increase in the earnings of program graduates follows licensure.

Discussion: Both the D/E rates and EP measures are based on the earnings of graduates after three years. For example, for students graduating between July 1, 2018, and June 30, 2019 (the 2019 award year), their earnings would be measured in calendar year 2022. In most cases this should give students enough time to settle into stable employment, and after that transition the Department believes it is reasonable to expect students to be able to meet the minimum standards of this rule to be able to afford their debt payments and for a gain in earnings beyond what they might have earned in high school to be realized.

Moreover, we note that a student's earnings three years after graduation might govern their loan payments for up to five years after the student graduates if they enroll in income driven repayment plans. That is between 20 and 25 percent of the full time that

students will be required to make payments on such plans, so the Department has a responsibility to taxpayers to hold institutions accountable in providing quality programs that produce graduates that earn enough to repay their loans at that point.

The Department is sympathetic to the argument that some programs may have lower earnings three years after graduation due to government-imposed post-graduate training requirements necessary to earn a license before an individual can practice independently. To assess the commenters' claims that these programs see substantial earnings gains just outside the measurement window used in the rule, we used program-level PSEO data. These administrative data are based on individual records that match program graduates to their annual earnings from the U.S. Census Bureau's Longitudinal Employer-Household Dynamics program at one, five, and 10 years after completion. The PSEO reports program-level median earnings at these three intervals, linked to 2-digit or 4-digit Classification of Instructional Program (CIP) codes for a large number of institutions and State public higher education systems throughout the United States. This is the only dataset we know of that currently includes program-level earnings for programs from a broad selection of institutions, credential levels, and fields of study with such long follow-up.

We limited the dataset to programs and cohorts that had non-missing median earnings at all three intervals. We then grouped programs by credential level and focused here on graduate programs, where commenters noted post-graduate training requirements.

The PSEO data do have some important limitations. First, they cover a subset of States and not all sectors within each State (*e.g.*, in many States, only public institutions report data). For privacy reasons, data are not reported at the finest CIP level. For example, the PSEO data reports earnings for professional doctoral programs, such as MDs, at the 4-digit CIP level. These programs comprise about 10 percent of the programs that are in the data we analyze. However, the PSEO reports master's and doctoral research/scholarship degrees, which account for about 90 percent of the graduate programs in the data we use, at the 2-digit CIP level. For many programs, 2-

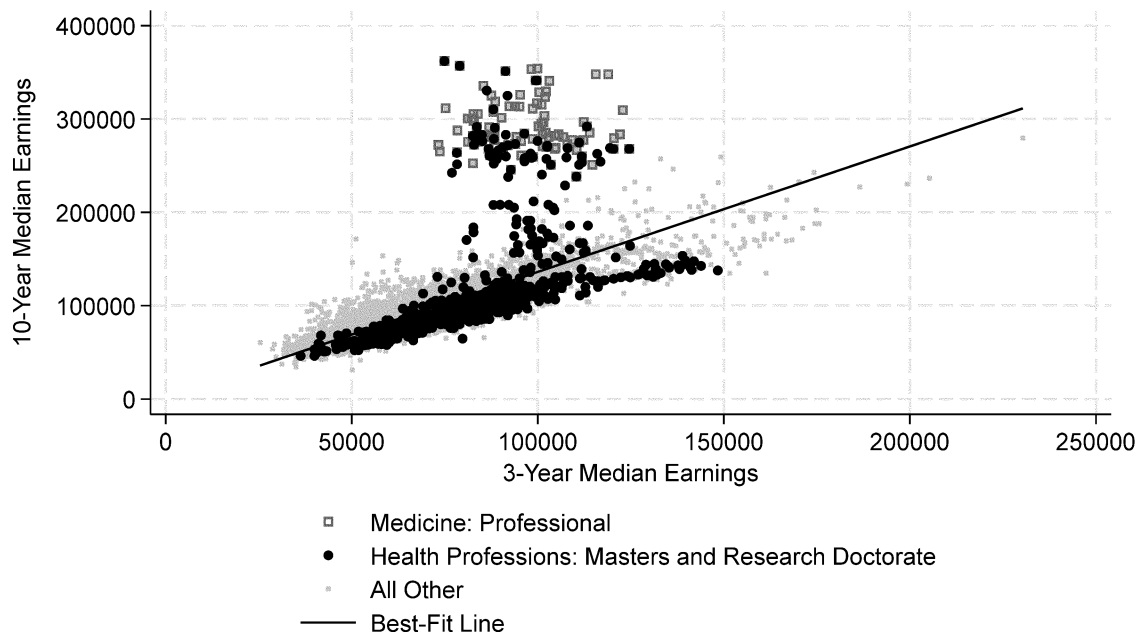
digit CIP groups can include a wide range of programs. Still, this is the only dataset that allows us to measure program-level earnings for a wide range of programs across the country at multiple time intervals that include earnings outcomes at least five years after students graduate. Ultimately, we observe median earnings for 7,856 graduate programs for the graduating cohorts of 2001, 2004, 2006, and 2007.

The commenters raise the concern that some programs will have particularly fast earnings growth after the third year after completion, suggesting that prior to earning their independent license their earnings three years after graduation were suppressed by the government-imposed requirement. In the PSEO data, we estimate 3-year median earnings as the average of the 1-year and 5-year median earnings available in PSEO.¹³⁰ Figure 1.2 below compares these estimated 3-year median earnings (on the x-axis) to the 10-year median earnings (on the y-axis), focusing on all graduate programs with available data. The figure shows that, in general, early career earnings are highly correlated with later career earnings: the correlation in the 3 vs. 10-year post-graduation median earnings is 0.74. The “best-fit line” in the figure (fit with a simple ordinary least-squares regression) illustrates the estimated linear relationship between the average 10-year measure and the estimated 3-year measure. Most programs have higher earnings when measured 10 years from graduation than 3 years after graduation, reflecting the fact that earnings tend to grow with experience for most workers. While most programs are centered around the best-fit line, there is an obvious cluster of graduate programs that have much higher 10-year median earnings than would be expected based on their 3-year earnings. The professional programs in Medicine, are all in the outlier group in the figure. Within the 2-digit CIP code of “Health Professions and Related,” there are some programs within the group of outliers, as well as programs that are not outliers in terms of their earnings growth. Though we do not show the relationship here, there is no similar group of outliers for BA programs evident in the PSEO data.

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¹³⁰ We replicated these analyses focusing on earnings growth from 1 year after graduation to 5 years after graduation and found qualitatively similar results.

Figure 1.2: 3- and 10-Year Median Earnings for All Graduate Programs, Highlighting Programs in Medicine and Health Professions



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Some commenters pointed to programs that prepare students to become mental health clinicians, including Clinical Psychology and Marriage and Family Counseling, which require post-graduate work to obtain a license. We have limited ability to analyze these programs in the PSEO data since the master's and doctoral research and scholarship programs for these fields are lumped with other health and psychology programs in those broader 2-digit CIP categories. The PSEO data does have data for Clinical, Counseling, and Applied Psychology professional doctorate programs in the PSEO data, but there are only a very small number of these programs in the data, preventing a robust view of the earnings growth of these programs.

Social Work is somewhat different from the other programs in that graduates with a master's in Social Work (MSW) pursue a variety of fields, and not all of them require a clinical

license.¹³¹ The first column of Table 1.3 below shows the number of graduates with an MSW each year, based on an annual census of social work programs by the Council on Social Work Education.¹³² The second column shows the number of first-time licensing exam takers, based on data from the Association of Social Work Boards.¹³³ Under the assumption that MSW graduates take their exam three years later, this leads to an estimate of approximately 60 to 70 percent of graduates taking the exam. Using a 6-year cohort period for all MSW graduates may not therefore be appropriate.

¹³¹ See, for example, Salsberg et al. (2020). *The Social Work Profession: Findings from Three Years of Surveys of New Social Workers*.

¹³² See, for example, Council on Social Work Education (2022). *Annual Statistics on Social Work Education in the United States*.

¹³³ See, for example, Association of Social Work Boards (2022). *2022 ASWB Exam Pass Rate Analysis Final Report*.

TABLE 1.3—MSW GRADUATES AND FIRST TIME LCSW EXAM TAKERS, BY YEAR

	MSW graduates	First-time LCSW exam takers
2011	20,573	9,100
2012	22,441	9,604
2013	22,677	10,879
2014	25,018	12,217
2015	25,883	13,044
2016	27,659	14,007
2017	27,270	16,095
2018	27,296	16,022
2019	29,546	17,207
2020	31,750	16,801
2021 .....	.....	20,657

In summary, there appears to be some possibility that, similar to programs in medicine, some other programs that provide training to licensed mental health professions may also generate significant earnings growth following a post-graduate training period. At present, detailed data do not exist to evaluate which groups of programs by credential and CIP code are likely to

have outlier earnings growth, but over time such data will become available in the College Scorecard. For example, program median earnings measured five years after completion should be available by early 2024. One area of complication is that the career paths of graduates of some mental health training programs are more diverse, and not all graduates might seek to become licensed.

In light of the evidence presented by commenters and the Department's analyses, we adopt a data driven process to identify qualifying graduate programs where we will use a longer cohort period to measure the earnings of graduates six years, rather than three, after they graduate. The Department selected an initial set of these fields based on evidence currently available to the Department suggesting that graduates of such programs may have constrained earnings three years after graduation as a result of government imposed postgraduation training requirements. Data in the College Scorecard will eventually allow more accurate assessments of which programs experience atypically high growth in graduates' earnings that are potentially due to postgraduation training requirements. Going forward, the Department will use these data, combined with an information request to the field to identify groups of programs (at the credential level and CIP code level) where A) state or other government postgraduation requirements exist that are likely to lead to delays in program graduates being able to practice independently; and B) programs are outliers with regard to their earnings growth relative to programs at the same credential level.

The Department will use a standard statistical procedure to determine whether groups of programs (graduate fields of study, defined by their credential level and CIP codes) are outliers with regard to their earnings growth. The Department will use College Scorecard measures to calculate the percent growth in the median earnings of program graduates between one- (or three-) and five-years (or ten-years) postgraduation. Lastly, a qualifying graduate program must have at least half of its graduates obtain licensure in a State where the postgraduation requirements apply. Since the rule is based on measuring the earnings of the median graduate, this requirement means that the student with median level of earnings is likely to have their earnings outcomes influenced by the training requirement.

Changes: We modify the definition of "cohort period" in § 668.2 so that

earnings for the 2-year cohort period are measured six years after graduation for completers in "qualifying graduate programs," rather than "a program where students are required to complete a medical or dental internship or residency." Similarly, we modify the definition of "cohort period" so that earnings of completers of a qualifying graduate program for the 4-year cohort period are measured the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated.

We then add to § 668.2 and define a "qualifying graduate program," which (a) establishes an initial list of graduate degree fields (defined by their credential level and CIP code) that potentially qualify for this longer cohort period used for earnings measurement for the first three years after the effective date of this rule; (b) establishes a regular data driven process the Department will use to update that list after the initial period; and (c) specifies further criteria that institutions must attest apply to a program to deem it a qualifying graduate program.

We define an initial list of potentially qualifying graduate programs whose students are generally required to complete a postgraduation training program to obtain a license to practice independently in the following fields: medicine, osteopathy, dentistry, clinical psychology, marriage and family therapy, clinical social work, and clinical counseling. These fields were selected based on credible evidence presented to the Department that program graduates are subject to lengthy, government-imposed, postgraduation training requirements; and graduates' earnings may be constrained by these requirements for at least three years after they graduate from a program.

A program is considered to be an outlier in terms of its earnings growth if its growth is more than two standard deviations higher than the average earnings growth among programs with the same credential level. A graduate degree field (defined by credential level and CIP code) will be considered to have outlier earnings growth if at least half of the individual programs in the field have outlier earnings growth.

In using the College Scorecard data to determine which graduate fields are outliers in terms of earnings growth, we seek to identify programs that have atypically high earnings growth between the first three years after they graduate, and subsequent years. In practice, the

College Scorecard measures earnings 1-, 3-, 5-, and 10-years (the 5- and 10-year measures are planned, but not yet available, though will be after the initial period) after graduation. Accordingly, to measure whether programs have outlier earnings growth we will base our assessment on the comparisons available in these data. Defining a program as an outlier based on whether its earnings growth is two standard deviations above the mean is rooted in a common statistical approach for defining outliers.¹³⁴

We will conduct this process every three years to balance a desire to stay up to date with current practices around licensure and training requirements, while ensuring institutions have stability in how the metrics of the rule will be calculated for their programs. In identifying postgraduate training requirements, we limit the rule to those that typically take at least three years to complete. This accommodation is meant to apply to programs where graduates' earnings capacity three years after graduation is constrained due to not yet having a required license. If training requirements took only one or two years to complete, graduates' earnings would not be constrained at the point when earnings are typically measured three years after graduation and the accommodation would not be necessary.

Programs with a credential level and CIP code included in the list of potentially qualifying graduate degree fields are eligible to have their earnings calculated under the extended cohort period (with a six-year lag before earnings are measured) if the institution attests that A) if necessary for the license for which the postgraduate training is necessary, that it is accredited by an agency that meets State requirements; and B) at least half of the program's graduates obtain licensure in a State where the postgraduation requirements apply.

We have also made conforming changes to refer to a "qualifying graduate program" in § 668.408.

Comments: One commenter mentioned that medical residency length varies by specialty, so the D/E

¹³⁴ There are several common ways of defining statistical outliers in a distribution, including by measuring how many standard deviations an observation's value is from the mean or by measuring the distance of a value from the 25th or 75th percentile of a distribution in terms of multiples of the interquartile range. In defining a single observation as an outlier it is more common to use a threshold of three standard deviations away from the mean. We use a more lenient two standard deviation standard for any single program, in part because we require that a majority of programs in a graduate field are outliers in order for that field to meet the outlier earnings test to be on the list of potentially qualifying programs.

rates calculation should allow for individualized time to license for programs with medical residency, not just an overall extension that is the same for all programs.

Discussion: We acknowledge that different medical specialties have different residency lengths. It is not feasible, however, to adapt different cohort periods for every student depending on the type of residency they pursue. We believe that establishing a 6-year lag before earnings are measured gives the vast majority of students in such programs time to complete residency requirements and measure their early career earnings.

Changes: None.

Tipped Income

Comments: Many commenters expressed concerns about our ability to fully capture earnings in sectors where gratuities play an important role in the compensation structure of employees, such as many jobs associated with cosmetology. These commenters lamented the widespread underreporting of income of this form to tax authorities, but claimed it posed a major obstacle to the Department's ability to capture the complete earnings picture for workers in such situations. These commenters also argued that this phenomenon of tax evasion was not the fault of institutions, and they should not face sanctions as a consequence. Several other commenters pointed to past Department statements about the prevalence of the underreporting of tipped income. These commenters believed that the estimates expressed in those statements support modifying our earnings measurement methodology.

Discussion: In the NPRM, the Department addressed its views on the challenges posed by unreported income of any sort. In the NPRM section titled "Process for Obtaining Data and Calculating D/E Rates and Earnings Premium Measure (§ 668.405)," we explained the rationale for relying on administrative income data collected by a partner Federal agency. There are several reinforcing reasons why we choose to rely on reported income to the Federal Government. These reasons include: individuals are legally required to report their income subject to Federal taxation; the Department relies on reported income in its administration of the title IV, HEA programs, including with respect to Pell grant eligibility, subsidized loan eligibility, and income-driven repayment payment determinations; past experiences with the earnings appeals process suggests it does not improve the quality of information available to assess program

performance; and new research on the prevalence and scope of unreported income and its effects on the accuracy of earnings measures.

As the Department explained in the NPRM, individuals who fail to report taxable income in a manner consistent with Federal law are subject to considerable legal penalties.¹³⁵ In an increasingly digitized economy, new Federal law in the American Rescue Plan Act lowered to \$600 the reporting threshold for when a 1099-K is issued, which will result in more third-party settlement organizations issuing these forms.¹³⁶ Relatedly, the increasing prevalence of electronic payment methods and the decline in cash transactions should lessen the concern of tax evasion as a source of error in our measurement of graduates' earnings. The anonymity of cash transactions makes it possible for the exchange of goods and services to take place without a record, facilitating evasion.¹³⁷ With digital transactions, however, records of the transactions are kept, not only by business owners but also by the payment processors. This record of payments exposes would-be evaders to elevated risk of apprehension in the case of an audit. Consequently, there are now greater practical hurdles to evading Federal tax reporting since the Department last regulated GE programs with respect to D/E rates. As we noted in the NPRM, this is not to deny that some fraction of income will be unreported despite legal duties to report, but instead to recognize as well that legal demands, technology, payment practices, and other relevant circumstances have changed.¹³⁸

In the NPRM, the Department also explained that administrative earnings data from the IRS play a crucial role in the HEA framework for determining Pell grant and other aid eligibility, as well as monthly loan payments on income-

driven repayment plans. Income information provided from official filings to the IRS are one of the primary ways that borrowers document their income to the Department to qualify for critical student or borrower benefits. It would be inconsistent and imprudent for the Department to use different earnings data for similar purposes related to the administration of title IV, HEA student aid. In these regulations, earnings data are employed so that students might avoid programs that leave them with very low earnings or unaffordable debt, in part to protect taxpayer investments in the title IV, HEA programs. More specifically, these regulations represent front-end safeguards on the use of title IV, HEA support, which will reduce Federal investments in ineffectual programs through loans and other student aid and, likewise, will reduce back-end liabilities for the Department and taxpayers when program completers default or make reduced Federal loan payments. It would undermine the goals of taxpayer protection if we allow borrowers to qualify for lower or zero loan payments due to low reported earnings to the IRS, but ignore these low reported earnings when providing students with information or determining whether a program prepares students for gainful employment.

The Department's experience with the earnings appeal process also cautions against making accommodations for the possibility of income underreporting. Because institutions were permitted to offer alternative measures of earnings through an appeals process under the 2014 Prior Rule, the Department has direct experience with the challenge of trying to measure earnings more accurately than the information available through administrative wage records. As the Department noted in the NPRM, the goal of more accurate earnings data through the earnings appeal process in the 2014 Prior Rule was ultimately frustrated by implausibly high earnings reported through the survey measures. Problems of accurate recall and selection bias (*i.e.*, only higher earners were sampled, or they were differentially likely to respond) among survey respondents likely impacted that earnings appeal process and make it unlikely that a similar process would yield improved information on a program's earnings outcomes.

The Department notes that commenters' concerns with earnings reporting (*e.g.*, misreporting or mismeasurement, classification of small business income, ability to observe all

¹³⁵ 88 FR 32300, 32335 (May 29, 2023).

¹³⁶ The 1099-K form reports payments from payment card companies, payment apps, and online marketplaces and is required to be filed with the IRS by these third-party settlement organizations. In 2021, a statute was enacted that reduced the threshold for reporting to \$600, as opposed to \$20,000 in years prior. This lower reporting threshold means that settlement organizations will likely have to file 1099-K forms for a greater number of sellers and transactions. See Public Law 117-2 (2021) ([govinfo.gov/content/pkg/PLAW-117publ2/html/PLAW-117publ2.htm](https://www.govinfo.gov/content/pkg/PLAW-117publ2/html/PLAW-117publ2.htm)).

¹³⁷ Indeed, commenters frequently cited the fact that graduates from fields such as cosmetology often operate cash businesses as a reason to suspect such proprietors of tax evasion. The economics literature also has cited a concern over tax evasion as a drawback of paper currency. See, for example, Rogoff, Kenneth (2015). Costs and Benefits to Phasing Out Paper Currency. *NBER Macroeconomics Annual*, 29, 1: 445-456.

¹³⁸ 88 FR 32300, 32335 (May 19, 2023).

earners) would be more likely to occur in survey measurements of income than in administrative records. First, the definitions of different types of income are complicated and would require survey respondents to recall not only those definitions but also the amount of earnings that fit into each category. By contrast, administrative records contain this information for all earners, often prepared by tax professionals who are well aware of the proper definitions. To the extent that commenters are concerned about tax evasion in reporting to the IRS, it is hard to see why program graduates would be more forthcoming about the true nature of their earnings on a survey, where they have no legal obligation to report accurately, especially if such reporting would implicate them in tax crimes. Survey data are also hard to collect accurately, with a great deal of scholarly work in survey methodology devoted to handling biases produced by common biases of respondents and the difficulty in collecting representative, truthful data on all types of individuals of interest. Given these challenges, lessons from prior experience, and the incentives for institutions to find a sample of students whose aggregated earnings would allow their program to continue operating, the Department does not believe that surveys would prove a reliable measure of earnings.

Finally, as we explained in the NPRM, new research is now available. A 2022 study shows that earnings underreporting is likely to be small—about 8 percent—in contrast to previous estimates that formed part of the record for the 2014 GE rule and was a basis for arguments in litigation over that rule.¹³⁹

¹³⁹ See *Am. Ass'n of Cosmetology Sch. v. Devos*, 258 F. Supp. 3d 50, 59–60 (D.D.C. 2017) (stating that “[a] report by Stanford professor Dr. Eric Bettinger, which was submitted to the agency during the notice-and-comment period, found that both tip income and self-employment income are, on average, underreported by around 60 [percent]”). The report referenced by the court is Bettinger, Eric (May 26, 2014). *Imputation of Income Under Gainful Employment*. We have reviewed that report again during this rulemaking.

The recent study that we reference in the text of this final rule and that we discussed in the 2023 NPRM is Cellini, Stephanie Riegg & Blanchard, Kathryn J. (2022). *Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income*. Geo. Wash. Univ. (www.peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf).

The 2022 Cellini and Blanchard study critiques the earlier May 26, 2014, study by Bettinger, which had estimated a much higher level of underreported earnings for cosmetologists. See *id.* at 11 n. 14 (discussing Bettinger (May 26, 2014). *Imputation of Income Under Gainful Employment*). See also our discussion in the NPRM, 88 FR 32300, 32336, 32346 (May 19, 2023). We independently reviewed the Bettinger report during this rulemaking, as well as Cellini and Blanchard’s critique of it. We concur

The Department’s goal is a reasonable assessment of available evidence overall, and the Department has taken care not to rely unduly on any one study. At the same time, the Department has accounted for evidence that puts into perspective the low magnitude of possible underreporting that is relevant to these rules.

In addition, as we emphasized in the NPRM, the timing for measuring earnings in this final rule differs from the timing in the 2014 Prior Rule.¹⁴⁰ This change in timing, where graduates’ earnings will be measured longer after when they graduate, will tend to increase the measured earnings of all programs. Based on our analyses of program median earnings estimates under the 2014 Prior Rule and those released in the PPD, we estimate that such increases are likely to be much higher than the 8 percent estimate of underreporting from the Cellini and Blanchard research. Therefore, the rule already includes safeguards against potential underestimates of earnings.

We also seek to avoid the perverse incentives that would be created by making the rule’s application more lenient for programs in proportion to how commonly their graduates unlawfully underreport their incomes. We do not believe that taxpayer-supported educational programs where benefits are provided based on reported income to the IRS should, in effect, receive credit when their graduates fail

with Cellini and Blanchard that the May 26, 2014, Bettinger report appears to include an unrealistic overestimate of underreported total income. The Bettinger report inflates total income by 50 percent, and the adjustment appears to be based on an assumption about the share of underreported tips; however, tipped income is only a portion of total income.

We further observe that, according to a report sponsored by Wella Company and others—with listed supporters including John Paul Mitchell Systems, the Professional Beauty Systems, and others, and submitted or referenced by numerous commenters during the public comment period for this final rule, including AACCS-salon owners reported a “high rate of tip compliance.” Qnity Institute (2023). *A Career in Pro Beauty*, at 8 (<https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=216592>). Specifically, that source indicates that 4 percent of salons reported not allowing their employees to receive tips, 87 percent of salons surveyed reported that tips were included on the W2 for all employees, and another 5 percent of salons reported tips on the W2 for some employees; meaning that just 4 percent of salons did not report tips for employees on W2s. See *id.* This report also relied on the Cellini & Blanchard (2022) estimate of 8 percent tip underreporting for the report’s estimate of annualized earnings. See *id.*

Finally, we note again that tips included on credit card payments to a business are more likely to be reported, as we have discussed above in the text, and it is reasonable to expect that many workers are complying with the law to include tips in their reported income.

¹⁴⁰ 88 FR 32300, 32329–35 (May 19, 2023).

to report income for tax purposes. All things equal, earnings underreporting will tend to have borrowers repay less of their loans under income driven repayment plans. If the Department ignores lower reported earnings among some programs, it would effectively be supporting greater taxpayer investments in those programs. Even if that position were fiscally sustainable, it would incentivize institutions to discourage accurate reporting of earnings among program graduates—at the ultimate expense of taxpayers. It could also potentially invite private investment in training programs aimed at exploiting this weakness in accountability for student loans that are unlikely to have to be repaid, thereby increasing the amount of Federal funds going to programs like these.

Given these considerations, the Department reaffirms its decision to rely on administrative earnings reported to a Federal agency, comparable in quality to earnings data from the IRS, without an opportunity to appeal these earnings estimates or accommodation for the possibility of income underreporting. To the extent that institutions believe that underreporting is negatively affecting their program’s performance on the D/E rates and EP metrics, the Department continues to believe that institutions are well positioned to counsel their students on the importance of tax compliance. Indeed, many commenters noted the role that cosmetology programs play in training their students to run their own small businesses, including managing their finances. Though individuals are certainly the most responsible party for decisions about tax compliance, programs are as well positioned as any party to inform students about the requirements and benefits of tax compliance. Therefore, it is also important in the Department’s view to maintain incentives for programs to deliver this message as effectively as possible.

Changes: None.

Comments: Many commenters expressed suspicion about the quality of our earnings data based on their own knowledge of earnings level in their industry. In some cases, this knowledge came from employing people in the field and marshalling evidence from the W–2 wage records of their employees, while others provided anecdotal reports of their own earnings or those of people they know working in the field.

Discussion: While we value the input of commenters who wish to alert us to a mismatch between their industry experience and the earnings reflected in the 2022 PPD released with the NPRM, we remain confident in the

comprehensiveness of the data we use to assess the earnings of program graduates. IRS earnings data are the most comprehensive source of income available for individuals in the United States and are legally required to be reported by all individuals who have income above a minimum earnings level. The measures provided in the PPD come from the College Scorecard and contain both total wages and deferred compensation from W-2 forms, as well as positive self-employment earnings from 1040-SE IRS forms for each completer. Only Federal administrative sources contain such a comprehensive view of earned income. The quality and reliability of this data is reinforced by the many commenters who cited their own business's W-2 earnings as evidence of typical earnings in their industry. Indeed, one commenter conducted (and some others cited) a study of earnings in a segment of the beauty industry by compiling W2 records for a sample of independently owned salon businesses with 1–10 locations. These attempts to estimate earnings underscore the advantages of Federal administrative data, as it provides a comprehensive repository of the records commenters put a great deal of effort into collecting. However, whereas commenters report information from only W-2 records they have immediate access to through their own businesses, or through surveys of a convenience sample of employees with response rates of 11 percent, IRS administrative records have no such gaps in data collection or limitations in coverage to individuals in a particular set of employers. What is more, the data available to the Department through its data match with the IRS allows it to observe self-employment income through the 1040-SE records it has access to, a source of earnings not available to commenters.

Changes: None.

Comments: Some commenters argued that in lieu of constructing an accountability framework based on reported earnings, the Department should focus its efforts on encouraging or requiring tax compliance among employers in industries where cash tips are prevalent.

Discussion: Though the Department fully endorses tax compliance for all legally obligated parties, it recognizes that enforcement of those rules is under the purview of the IRS. In addition, as outlined in the NPRM and the Department's above responses about unreported income, the Department does not believe there are strong reasons to make accommodations for the possibility of income underreporting.

Changes: None.

Comments: Some commenters noted recent changes in tax law requiring electronic third-party payment processors to issue a 1099-K for dollar amounts as low as \$600, a fact relevant to the ability of workers who use such electronic transfer payments to have those payments go undetected. One commenter noted that because this change will likely increase tax compliance and mitigate any underreporting issue, the Department should delay implementation of the regulations until the earnings years used in the rule were covered by this change, which was first applied to the 2022 tax year.

Discussion: As the Department explained in the NPRM and its response to commenters with regard to the underreporting of income, the changes to 1099-K reporting requirements for third party settlement organizations is an important change in the landscape of tax compliance since the last time the Department expressed a view on the extent of underreported income in administrative earnings data. However, while this change certainly buttresses the Department's confidence that currently there is not a more reliable source of earnings information for all occupations, it is not the decisive factor, and therefore the Department does not view the delay of the law's implementation as grounds to delay implementation of either the Transparency Framework or the GE standards.

Changes: None.

Unearned and Self-Employment Income

Comments: Some commenters noted that self-employment is common for some fields and that accurate income measurement could be difficult for individuals in such circumstances because individuals often choose to keep income in their business or may be able to count business expenses against their total income to reduce their taxable income. In particular, one commenter expressed concern that earnings captured on form 1040 schedule SE would not be included in graduates' incomes. One commenter asserted that the Department has acknowledged limitations in its ability to capture self-employment earnings in the Master Earnings File and claims no adequate remedy has been proposed.

Discussion: The earnings data in the PPD used to conduct the Regulatory Impact Analysis come from the College Scorecard data, which matches title IV, HEA recipient data for completer cohorts to three-year earnings information from the IRS. As the

technical documentation for the College Scorecard explains, these data contain “the sum of wages and deferred compensation from all non-duplicate W-2 forms and positive self-employment earnings from IRS Form 1040 Schedules SE (Self-Employment Tax) for each student measured.” As noted elsewhere, the Department believes these data are well-suited for the purposes of these regulations.

Changes: None.

Inclusion of Non-Completers

Comments: Several commenters provided feedback about our choice to exclude non-completers from our calculation of official measures of program performance, including the D/E rates and EP measures. Some mentioned the possibility of including non-completers in the information provided to students through the financial value transparency framework. One commenter supported including non-completers because they represent such a large share (the majority) of students in higher education. Another recognized the value of including non-completers but argued against it for the purposes of constructing a consumer information tool. The remaining commenters opposed the use of non-completers for these measures, arguing that most students were concerned with results for students who complete their programs.

Discussion: Though the Department recognizes the importance of considering the experiences of students who do not complete a program for understanding student success in any field, we believe that tracking results for completers is the most practical approach to assessing outcomes. That approach bases the median earnings measure on students who have had the full benefit of the educational experience at the institution, and that measured debt levels reflect the cost of obtaining the credential. While we agree that institutions should be accountable for helping their students attain a degree, these regulations focus primarily on promoting a balance between financial costs and benefits to students of different credentials. Still, the rule includes completion rates at the institution or program level among a set of supplemental performance metrics that may be included in the program information website to provide this added context to students.

Changes: None.

Median and Mean—§§ 668.403 and 668.404

Comments: A number of commenters disagreed with the Department's

proposal in the NPRM to use the median earnings amount for the D/E rates measure and the EP measure. Many commenters noted that in the 2011 and 2014 Prior Rules, the Department used the higher of the mean and median earnings amount as the denominator for the debt-to-earnings rate and these commenters suggested that approach should be applied to calculate earnings for the D/E and EP metrics in this rule as well. One commenter noted that the Department's rationale in the text of the 2014 final rule for using the higher of mean and median earnings was grounded in a concern about the impact of a large number of zero earnings individuals in a completer cohort. In general, quantile statistics such as the median have the drawback of instability if there is a large dispersion of the data near a given quantile point.

One commenter presented a simple example, if a program had five earners (putting to one side the fact that such a program's earnings would be privacy suppressed) whose earnings were \$0, \$0, \$0, \$50,000, and \$50,000, their median earnings would be \$0. However, if just one of those \$0 estimates switched to \$50,000, the median would switch to \$50,000 as well. The question presented by such a case is whether the mean earnings (\$20,000 in the first case, \$30,000 in the second) better conveys what graduates typically earn at such a program than the \$0 median.

The 2014 Prior Rule argued that in such cases the mean is the better reflection of what students can expect than the median. It concluded that in cases where the median is the higher of the two statistics, the mean should be preferred because it reflects high levels of employment in higher earning jobs. Such an example is evident in our second case above, where the median earnings would be \$50,000, but the mean is \$30,000.

Discussion: As the Department explained in the 2023 NPRM's Background Section,¹⁴¹ the Department has changed its view on the tradeoffs presented by the advantages and disadvantages of these two measures of central tendency and has concluded that the median is the correct measure. This view is grounded in the fact that the median reflects the minimum earnings level achieved by at least half of a program's graduates, a meaningful measure of student earnings that reflects the experience of the majority of students. Based on data released in the 2014 rule, the median and mean earnings of programs are often very similar. Mean earnings are most

commonly higher than median earnings of program completers at programs with very low earnings levels. In such programs, most graduates may have earnings close to minimum wage earnings, but there may be some outlier observations with higher earnings—leading the mean to be higher. Again, we believe it is more appropriate to base the rule on the median earnings, since it indicates the amount of earnings that half of graduates exceed, and it is not as sensitive to outlier observations.

The Department notes that the commenter's example with just five earnings estimates provides some useful insight into potential limitations of the use of median earnings, but gives an overly dramatic sense of the stakes between the mean and median in the context of the rule. Under these rules, the Department only calculates earnings when there is a minimum of 30 completers in a cohort. With more observations, the difference in earnings among observations near the median is likely to be much smaller than in the commenter's example and so additions of one higher or lower earner will tend to change the median only slightly. On the other hand, an addition of a single extremely high earner could influence the mean substantially, even though outcomes for nearly all students are left unchanged. We view the potential of this latter type of distortion as much more likely and therefore prefer the median.

The Department also believes it is important to be consistent across measures by using same statistic to measure both program graduates' earnings and to construct the earnings thresholds to calculate the earnings premium. The Department cited evidence in the NPRM that mean earnings levels among high school graduates in a State are always higher than median earnings levels because of the large rightward skew of the earnings distribution created by very high earners in income distributions. Using the higher of mean and median earnings in the construction of each State's high school earnings threshold would thus result in a much higher EP threshold for programs to meet. Given our concerns with the representativeness of the mean in the earnings context, we believe such a standard would be an inappropriate comparator for programs. Taken as a whole, we believe the correct choice for both setting an earnings threshold and measuring program graduates' typical earnings against that threshold is to use median earnings.

Changes: None.

Part-Time Employment

Comments: Many commenters mentioned that workers often choose fields such as cosmetology for their flexible work schedules, allowing them to combine part-time work with other valuable activities such as childcare. Working fewer hours means lower annual earnings, they say, but that hourly rates remain very strong and show that many jobs are still lucrative given the number of hours employees in these sectors are working.

Discussion: We acknowledge that many workers may choose to pursue occupations with work schedules that suit their lives. Regardless of the hours that individuals choose to work, we believe it is important that students who borrow earn enough in total to be able to afford their debt payments. For the earnings premium metric, we do not condition on full-time employment in measuring the median high school earnings of individuals in the same State. We therefore compare the earnings of program graduates to high school degree earners in the same State, some of whom are also making similar choices to work part-time.

Changes: None.

Graduates Who Earn Higher Degrees

Comments: One commenter expressed concern about the exclusion of graduates who earn higher degrees from a program's data, since these students may ultimately have higher earnings.

Discussion: In measuring median earnings under the rule, we exclude program completers who are enrolled full-time in a postsecondary program in the year their earnings are measured. Otherwise, however, we will not exclude individuals who may subsequently have gone on to earn a higher credential. As a result, if one program helps students attain higher credentials and thereby higher earnings, that will be reflected in the programs outcomes.

Changes: None.

Earnings Data

Comments: Some commenters expressed suspicion whether the IRS data sources were accurate, with concerns often centering around differences between the incomes reported in the Program Performance and other government sources such as the Bureau of Labor Statistics. As a result, some commenters argued, schools should have the ability to examine earnings data.

Discussion: The disparities between the earnings data in the PPD and the Bureau of Labor Statistics (BLS) in

¹⁴¹ 88 FR 32300, 32311 (May 19, 2023).

particular stem from a difference in what these two sources attempt to measure. Whereas the PPD measures earnings for all individuals who graduate from specific programs, regardless of the industry they enter (or whether they find any formal employment at all) 3 years after completion, the BLS data cited by the commenters measures the distribution of earnings for individuals who successfully work in a given industry, irrespective of their path into the industry or the stage of their career. It is, therefore, not surprising that these two data sources would differ in the earnings they observe; they estimate a different value for a different population. As we explained in the NPRM and elsewhere in this preamble, we believe that administrative earnings records from the Federal Government matched to the specific students who graduated from a given program is the correct way to measure program earnings outcomes. We believe it is much more appropriate for its purpose than aggregated statistics for whole sectors of the economy, which do not have any necessary relationship to the outcomes of graduates of particular programs.

Changes: None.

Comments: One commenter noted that there is no provision for adjusting the 2021 and 2022 earnings for inflation, in contrast to earnings data provided on the College Scorecard. The commenter noted that we did not explain was given in the NPRM about the rationale for this difference, even though it could affect earnings measurements.

Discussion: The D/E rates metric is a ratio of debt payments divided by earnings or discretionary earnings. For presentation purposes, debt and income numbers from previous years may be translated into more current year dollars on the program information website to facilitate interpretation. But outcomes under the D/E rates metric would not be affected if we do so since both the numerator and denominator would be subject to the same inflation adjustment. For the EP metric, again since both program earnings and the earnings threshold would be adjusted by inflation, the pass/fail outcome of each program is not influenced by the adjustment. Still, the Department may present the EP with such an adjustment on the Department's website and in other communications to facilitate interpretation.

Changes: None.

Completers With No Income

Comments: One commenter recommended that the Department

change its calculation of median earnings for programs by excluding individuals with no reported income and then also removing the same number of individuals from the debt cohort, where those individuals are selected for having the highest debt burdens out of the cohort for that program. The rationale, they explained, was that it is unfair to assume zero earnings reflects inability to find work.

Discussion: While the Department recognizes that often individuals choose to leave the labor force for reasons that do not reflect their ability to find a job, we believe that, especially with respect to the career training programs covered by the accountability provisions of the regulations, students typically have a strong interest in being employed in the three-year window directly after graduation. As a result, we believe measuring median earnings, and including those with zero earnings, among completers is the best way to capture the labor market outcomes of program graduates, including both the likelihood that they find employment and the earnings among those who are employed.

Changes: None.

Individuals in Comprehensive Transition and Postsecondary (CTP) Programs

Comments: One commenter indicated that the Department should not exclude students enrolled in CTP programs from GE requirements, arguing that such students were particularly vulnerable and, despite being ineligible for Direct Loans, could exhaust their Pell Grant eligibility while enrolled in poor-performing CTP programs. The commenter asked the Department to consider other options to ensure the quality of CTP programs.

Discussion: Although we agree with the commenter that it is important that CTP programs are of adequate quality, we do not believe that applying the Financial Transparency metrics to CTP programs is the appropriate method of ensuring program quality. As stated in the NPRM, the Department does not believe it is appropriate to apply either the earnings premium or D/E metric to CTP programs. Since students in CTP programs are not required to have a high school credential, it would be inappropriate to judge a CTP program's earnings outcomes against the outcomes of individuals with a high school diploma or the equivalent. And, since these students also are not eligible to obtain Federal student loans, debt-to-earnings rates would be meaningless for these programs.

Changes: None.

Data Sources

Comments: Some commenters expressed concern that the Department has not definitively determined the Federal data source that will provide the earnings data used to calculate the D/E rates and EP measures. These commenters further argued that this indeterminacy does not allow the public adequate opportunity to comment on their choice of data source.

Discussion: The Department provided an adequate notice and opportunity to comment on the proposed rules regarding earnings data, as well as the subjects and issues involved in choosing among data sources. Although the Department has not finalized its data source for the administration of these rules, we have confidence in the reliability of all Federal agency sources under consideration. We believe it is prudent for the long-term efficacy of the rules to retain the flexibility to change data sources if future changes in law or data collection practices and availability make impracticable the use of whichever source might be best to use today. At the same time, the Department's NPRM informed the public about the kind of data needed for the rules, as well as the sources from which those data might be drawn. Indeed, in the NPRM, the Department expressed its current preference for the use of the IRS data that already forms the basis of the earnings measures in the Department's College Scorecard data, and that is used for the Regulatory Impact Analysis in this rule. Comments were welcome on the data types and data sources that we could use in the final rule, including any specific concerns about the Department's preferred options. The Department did, in fact, receive a number of comments regarding those issues—for example, on whether administrative data capture self-employment earnings or whether other survey-based sources of earnings might be appropriate substitutes—and we have responded to those comments elsewhere in this document.

Changes: None.

Comments: Several commenters pointed to salary aggregation websites such as salary.com and ZipRecruiter as alternative data sources, either to support claims about the pay increases their students would see after an initial supervisory or apprenticeship period post-graduation or to dispute the facial validity of the Department's earnings estimates for some types of programs.

Discussion: As with other data sources provided by commenters to challenge the accuracy of the data provided through the PPD, the

Department would like to emphasize the comprehensiveness of its Federal administrative data and the reasons that it should be used instead of external sources that do not have a census of earnings records directly matched to the individuals who complete a given program of study.

Websites such as those mentioned by commenters use a variety of methods to estimate earnings for a field, but none of these methods come close to the coverage of the IRS data used to obtain program-level earnings. Instead, they rely on sources such as job listings or self-reported income from website users or other survey sources. By their nature, these methods try to estimate the data we directly obtain from Federal administrative sources. In addition, these external sources provide industry-wide estimates of earnings, regardless of worker experience or background, and often miss the earnings of program graduates who work in a different occupation than that the program intends to train students for, as well as students who may not find work altogether. We do not believe that these sources provide any reason to doubt the accuracy of Federal administrative data, and more broadly believe they are not an appropriate data source to assess the performance of particular programs for our present purposes.

Changes: None.

Comments: One commenter expressed concern that institutions would not be able to collect income information from their students, because it would be a large burden and because students would be unwilling to (and should not have to share) personal income information. This commenter also suggested that the State should collect such information.

Discussion: The regulations in this rulemaking do not require institutions to collect earnings information for their students. The Department will obtain the relevant earnings information through a Federal agency with administrative earnings records.

Changes: None.

Minimum N-Size for Earnings and Debt Metrics

Comments: One commenter noted that they interpreted the remarks of the Department as implying that we would consider a look-back period of 2 to 6 years to develop a cohort of a minimum of 30 students. The commenter objected to the longer look-back period, arguing that such a long period cannot account for any improvements in policy that a program may have made in more recent years.

Discussion: The Department will use a 4-year cohort (*i.e.*, combining completers who graduate over 4 consecutive award years) when a 2-year cohort is insufficient for a n-size of 30. The Department has not considered a period that is broader than 4 years. The use of a 4-year cohort, when needed, will enable the Department to include data from more programs in the D/E and EP measures.

We note that some lag in the metrics between when students complete a program and when the data is produced is inevitable if we wait several years to measure the earnings of program completers. As discussed elsewhere we believe the 3-year lag to measure earnings is appropriate to allow graduates a period to find employment and settle into their early careers, and the broader lag stems from this choice.

For a period after the effective date of the rule, however, institutions can choose to report data for transitional rates on more recent cohorts' information for calculating median debt levels. During this transition period, changes to programs' borrowing outcomes will be reflected more rapidly in the D/E rates published by the Department.

Changes: None.

Comments: One commenter suggested analysis of additional n-sizes beyond the assessment of 10 and 30 completers, as we discussed in the NPRM. They suggest allowing the minimum n-size to vary by program depending on the need for privacy considerations, or for the rule to include flexibility in the determination of n-size.

Discussion: An n-size of 30 is consistent with past Department practices, including the policy governing the development of cohort default rates, as well as IRS data policy. We recognize that a lower n-size would include more programs, but we believe the n-size of 30 completers over a four-year period is appropriate to protect the privacy of individuals who complete smaller programs, and we project will result in coverage of over 80 percent of students receiving Federal student aid (as documented in the RIA).

Changes: None.

Comments: A few commenters posited that excluding D/E rates for programs with fewer than 30 students completing during a 2- or 4-cohort period rewards public and private nonprofit programs with poor graduation rates.

Discussion: As detailed in the RIA, many programs have very few completers in any given year, and such programs are indeed more prevalent among public and private nonprofit

institutions. Still, the more relevant measure of coverage of the rule is the share of students covered. As we explain in the RIA, with these privacy safeguards in place we expect to be able to publish metrics for programs that enroll over 80 percent of federally aided students in both the GE and non-GE programs.

Changes: None.

Comments: One commenter supported the approach to calculate median debt based on at least 30 completers in an applicable cohort.

Discussion: We thank the commenter for their support.

Changes: None.

Measurement of Debt

General Opposition

Comments: Several commenters argued that the rule is too lenient because of reasons such as: it does not include all types of debt in the calculation of D/E, does not take into account other debt metrics such as repayment rates, and because graduate student have longer amortization periods. One commenter argued that the leniency leads only a small subset of programs to be subject to the metrics and that many programs are immune from the accountability metrics.

Discussion: The regulations will provide stronger protections for students of programs where typical students have high debt burdens or low earnings. The share of student enrollment that is covered under the rule is much higher than the share of programs that is covered because there are many very small programs with only a few students enrolled each year. As discussed in the RIA, we estimate that more than half of all programs have fewer than five students completing per year and about 20 percent have fewer than five students enrolled each year. The Department believes that the coverage of students based on enrollment is more than sufficiently high to generate substantial net benefits from the policy. We believe that the number of students, rather than programs, covered by the rule is the more important consideration because the benefits, costs, and transfers associated with the policy almost all scale with the number of students (enrollment or completions) rather than the number of programs.

We do not agree that the Department arbitrarily chose which types of debt to include in the D/E rates calculation. For most borrowers, we measure substantially all of their debt, including private and institutional loans. We exclude parent PLUS loans because

parents—and not the students—are responsible for repaying those loans. Finally, we cap this debt at the net direct costs charged to a student in deference to consistent concerns from institutions that they cannot directly control students' borrowing for living expenses.

Changes: None.

Comments: Several commenters criticized the Department for only applying GE rules to the for-profit sector. The commenters argued that 4-year degree programs (administered at private nonprofit and public institutions) saddle students with more debt than shorter programs; however, these programs are not subject to accountability under GE. These commenters argued that the notion that for-profit institutions saddle students with debt at the taxpayers' expense is misguided and not the source of the affordability problems in higher education.

Discussion: The GE regulatory provisions do not measure total debt in isolation. Rather, the regulations hold programs accountable for the ratio of debt to earnings. Although debt may be higher for graduates of some 4-year programs (at private and public institutions), it is reasonable to expect typical earnings to also be higher at programs that lead to students borrowing large amounts. The rule will require 4-year programs at for-profit institutions to pass the D/E and EP metrics, and the rule includes transparency provisions for non-GE programs, including 4-year degree programs, that fail D/E metrics to provide information about the program. Further, GE provisions in the HEA apply only to GE programs.

Changes: None.

Comments: One commenter does not believe institutions should be held accountable for student borrowing because institutions' financial aid departments do not have control over how much students borrow. Specifically, the commenter noted that institutions are required to offer students loans up to what they are offered, even if that exceeds the cost of tuition and fees.

Discussion: Under § 668.403, we cap the debt counted for institutions at the costs of tuition and fees and books and supplies. Institutions have a role in how much they charge to attend programs and in the earnings of their students. These regulations encourage students to attend programs where their debt levels are not likely to be burdensome relative to their earnings.

Changes: None.

Comments: One commenter questioned whether large loan balances are the primary reason for default, as opposed to students' choice or preference to not repay loans or changes in financial and repayment circumstances. The same commenter questioned the use of default rates while the Department is pursuing Fresh Start.

Discussion: This rule focuses on the ratio of debt to earnings and an earnings premium, not on default rates. The Department will use the D/E rates measure to assess the affordability of the debt students incur to pay for their educational program. Regardless of students' decision to make loan payments, a program's D/E rates will be the same.

Changes: None.

Debt Capped at Net Direct Costs

Comments: Several commenters supported the modification to cap the median loan debt at tuition and fees net of institutional grants rather than the amount assessed.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Many commenters argued that the Department should reduce the total debt number by the amount of any Federal or State grant funds that the student received and used to pay tuition and fee costs. These commenters argued that some students borrow to cover living expenses even when they have received State and Federal aid to cover tuition and fees. These commenters suggested that to ensure that institutions are not held accountable for funds borrowed in excess of what is required to pay for tuition and fees, the Department should reduce the total debt number by the amount of any Federal or State grant funds that the student received and used to pay tuition and fee costs.

Two other commenters suggested that the Department deduct "outside scholarships and grants intended for direct costs from the capped tuition and fees" in the D/E metrics, recommending that the Department net-out both institutional and external grant aid.

Discussion: The Department will deduct only grant controlled by the institution from the estimate of charges for direct costs used to cap individual borrowers' debts. The institution controls institutional grants but would typically not control State grants or external scholarships.

Additionally, under § 668.403, median debt is calculated by capping the total amount of each student's borrowing at the charges for direct costs (tuition, fees, books, and supplies),

minus any institutional grant aid the student receives. Therefore, the Department does not hold institutions accountable for loans taken out in excess of direct costs as the commenters suggest. One way that programs can lower their D/E metric is by controlling their net direct program costs—that is, by lowering tuition or providing greater institutional aid.

Changes: None.

Comments: Several commenters suggested that the Department include all student debt (not just debt for tuition, fees, books, equipment, and supplies) in the measurement of debt. A few commenters argued that until the Department restricts borrowing to course delivery, the Department should count all debt regardless of what it is used for.

Discussion: The measurement of debt will cap each student's amount borrowed at the total net direct costs charged to a student. This is in part in deference to institutions' concerns that borrowing for the cost of living is not directly under the control of the institution, whereas institutions can exercise more control over the direct costs charged to students.

Another reason to cap the measurement of debt at direct charges is that it mitigates the influence of differences in students' family income background on measured median debt levels across programs, since some of the additional borrowing of low-income students relative to higher income students is due to borrowing for living costs.

Changes: None.

Comments: One commenter stated that the Department should not remove institutional grant aid from cost of attendance in the measurement of program debt.

Discussion: This rule departs from the 2014 Prior Rule in subtracting institutional grants and scholarships from the measure of direct costs. This change, as described in the NPRM, was in the interest of fairness to institutions that provide substantial assistance to students. Since this type of aid is more common among non-GE programs than GE programs, this change in approach is related to the fact that under subpart Q, the D/E rates will be computed for all types of programs rather than only GE programs as was the case in the 2014 Prior Rule.

Changes: None.

Comments: One commenter suggested that the Department exclude loans borrowed for programs at the institution—other than the one from which the student graduated. The commenter contended that, to establish

a true estimate of debt associated with the program a student completes, the attribution provisions should only apply to debt associated with credits from a non-completed program that transfer into the student's ultimate program or that share the same CIP code, or career programs completed at the institution, or both.

Another commenter noted that when students transfer between programs, or when a student enters an institution and does not declare a major, attributing debt to a particular program becomes complex.

A few commenters suggested that the Department include all student debt incurred as of graduation, not just debt incurred for a particular program. These commenters recommended that we hold institutions accountable for the overall financial well-being of their students. The commenters also noted that many programs admit students knowing that they incurred debt from other programs at the same institution or at other institutions. The commenters also highlighted the relevance of the inclusion of all debt for stackable credentials.

Discussion: The Department excludes loan debt incurred by the student for enrollment in programs at other institutions (with the potential exception of when institutions are under common ownership or control). We do not believe it would be fair to hold institutions accountable for debt incurred at other institutions not under their control. We agree that attributing debt to programs within institutions is complex and believe the most reasonable way to do so is to assign it to the highest credentialed program subsequently completed by the student at the institution (within undergraduate and graduate levels). The measurement of debt is based on program completers.

Changes: None.

Parent PLUS Loans

Comments: Many commenters supported exclusion of parent PLUS loans from the median debt calculation. Commenters noted that parent PLUS loans are serviced by parents' earnings, so these loans should not be included in a measure of the student's debt service obligations. Commenters also noted that the inclusion of parent PLUS loans in debt service might logically suggest also including parental earnings in D/E rates calculations.

Discussion: We agree with commenters in support of exclusion of parent PLUS loans. We exclude parent PLUS loans because parents are responsible for repaying those loans, and treating the debt service associated

with those loans as a burden to be paid out of the students' earnings may not be appropriate for many students.

Changes: None.

Comments: Several commenters suggested that the Department include parent PLUS loans in calculation of debt for D/E ratios. One commenter argued that excluding parent PLUS loans benefits programs serving mostly dependent students. The commenter also contended that since independent students are ineligible for parent PLUS loans, excluding these loans increases debt for programs serving primarily independent students. The commenter claimed that while the Department states that students are not responsible for repaying parent PLUS loans taken out by a family member, many students nevertheless assist their parents with repayment of these loans. Another commenter argued that the exclusion of parent PLUS loans fails to account for the true amount of debt and unreasonably benefits degree-granting programs at public institutions. Several other commenters claimed that by excluding parent PLUS loans, the Department is undercounting debt obligations and creating a loophole for institutions. Institutions could shift the financial burden of financing higher education from the institution or the student to the parents. One commenter suggested that the Department exclude Direct PLUS loans from measure of debt.

Discussion: The primary purpose of the D/E rates is to indicate whether graduates of the program can afford to repay their educational debt. Repayment of parent PLUS is ultimately the responsibility of the parent borrower, not the student. Moreover, the ability to repay parent PLUS loans depends largely upon the income of the parent borrower, who did not attend the program. We believe that including in a program's D/E rates the parent PLUS debt obtained on behalf of dependent students would cloud the meaning of the D/E rates and would ultimately render them less useful to students and families.

The commenter contended that not including parent PLUS loans increases debt for programs serving primarily independent students. This statement is not accurate, because including parent PLUS loans would not impact (positively or negatively) the median debt for a program that serves predominantly independent students who are ineligible for parent PLUS loans. By not including parent PLUS loans, the median debt is not increased as the commenter suggests. Rather, exclusion of parent PLUS loans creates an accurate

assessment of the student's ability to repay loans as discussed above.

We remain concerned, however, about the potential for an institution to steer families away from less costly Direct Subsidized and Unsubsidized Loans towards parent PLUS in an attempt to manipulate its D/E rates. We have addressed this concern, in part, by proposing changes to the administrative capability regulations at § 668.16(h), which would require institutions to adequately counsel students and families about the most favorable aid options available to them.

While distinct from the rationale for excluding parent PLUS loans, we note that, for the vast majority of programs, a minority of students are recipients of parent PLUS loans and so their inclusion would affect the median debt of a program only infrequently.

Changes: None.

Comments: A commenter stated that loan debt from parent PLUS loans disproportionately impacts low-income and Black and Hispanic families and contributes to the Black-White racial wealth gap. This commenter suggested that the Department either include parent PLUS loans in the debt measure or impose restrictions on the use of parent PLUS loans that would make it harder for institutions to "game the system." Specifically, the commenter offered as an example, that the Department could set limits on the percentage of a school's funding that comes from parent PLUS loans or require that students exhaust their title IV, HEA borrowing options before taking out parent PLUS loans.

Discussion: The Department shares the commenter's broad concerns about parent PLUS loans. As explained above, however, the Department does not believe that this rule is the appropriate vehicle to address these concerns.

Changes: None.

Cancelled Debt

Comments: One commenter proposed that the Department remove any student debt discharged or cancelled, including as the result of a national emergency, from the D/E rates calculations.

Discussion: The Department may discharge or cancel debt for a variety of reasons, including if a student becomes totally and permanently disabled, if a student completed 10 years of payments while working for an eligible public service employer, and in circumstances where an institution may have made misrepresentations to students, among other reasons. These actions to discharge or cancel loans do not absolve or change an institution's obligation under the GE regulation to offer

programs that provide graduates with earnings sufficient to repay their education debt. For instance, discharges through borrower defense to repayment are due to acts or omissions by the institution. Excluding such discharges from the GE program accountability framework would create a situation where an institution that is found to have engaged in substantial misrepresentations ends up with reduced debt amounts for GE purposes. A similar rationale applies for false certification discharges. In addition, were we to exclude closed school discharges, an institution at risk of failure would have incentives to close some locations to improve their performance on metrics under the GE program accountability framework. Other discharges, such as those tied to Public Service Loan Forgiveness or income-driven repayment are unlikely to be relevant for consideration here because they take at least 10 years for forgiveness, which is longer than the timeframes under consideration for the GE program accountability framework.

However, consistent with the 2014 GE rule, the Department will exclude students with one or more loans discharged or under consideration for discharge based on the borrower's total and permanent disability or if the borrower dies. We exclude these students (from both the numerator and denominator of the D/E and EP measures) because under the HEA a student with a total and permanent disability is unable to engage in substantial gainful activity for a period of at least 60 consecutive months and thus their ability to work and have earnings or repay a loan could be diminished under these circumstances, which could adversely affect a program's results, even though the circumstances are the result of student events that have nothing to do with program performance. Similarly, an institution would not be able to anticipate if a borrower passes away.

Changes: None.

Reduced Program Hours

Comments: One commenter proposed that the Department create a process for schools to report on programs where they reduced the hours and, therefore, student debt in recent years. The commenter contended that this will allow institutions to correct the debt of previous years that did not reflect the current program using the same CIP code.

Discussion: The Department acknowledges that institutions may attempt to improve their program outcomes following the introduction of

rates. The transitional D/E rates discussed in the NPRM allow non-GE programs to report information to calculate debts for the most recent 2 award-years, rather than for the same completer cohorts (who generally graduated about 5 years earlier) as used to measure earnings outcomes. Based on comments received, we have modified the final rule to extend this option to all programs. This will allow improvements in borrowing outcomes to be reflected in the D/E rates.

Changes: We have extended the option to report transitional rates information necessary to compute median debt for more recent cohorts to GE programs.

High Debt Holders Eliminated Based on Data Limits

Comments: Many commenters questioned eliminating the highest debt holders based on the number of students without earnings data and believes the Department's basis for doing so is arbitrary and unspecified.

Discussion: The Department is subject to limitations in data access that necessitate our approach. When the Federal agency with earnings data provides the Department with the median earnings of students who complete a program, it will also provide an estimated count of the number of students whose earnings information could not be matched or who died. We remove that number of the highest loan debts before calculating the median debt for each program. Since we do not have individual-level information on which students did not match to the earnings data, we remove those with the highest loan debts to provide a conservative estimate of median loan debt so that we do not overestimate the typical loan debts of students who were successfully matched to earnings data.

Changes: None.

Debt Service Payments Calculations

Comments: A few commenters expressed concerns with the calculation of the annual debt service amounts for a typical borrower at a program that serve as the basis for the debt-to-earnings ratios. The commenters disapproved of amortizing the median program debt balance according to the method described in the regulation rather than calculating the actual annual debt service levels observed for program graduates under the terms of their loans and chosen repayment plan.

A couple of commenters noted that the interest rates used to calculate D/E rates do not correlate with the actual interest rates of the student loan portfolio. The commenters

recommended that the Department revise the annual loan payment calculation to reflect the actual repayment terms of the individual student, including the amortization period and interest rate.

Discussion: Actual loan payments depend on a variety of factors, including which repayment plans borrowers elect. Programs with the same levels of borrowing and the same earnings outcomes could have median graduates with different realized loan payments, then, depending on the share enrolled in various plans. Similarly, changes in the set of plans available might lead actual loan payments to change even with no changes in borrowing or labor market outcomes. Using estimated yearly debt payments that are a function of how much students borrow should focus institutions on the goal of ensuring that their programs are *ex ante* not requiring students to take on unaffordable debt, given the expected earnings of their graduates. The Department disagrees that the interest rates used to calculate D/E rates do not relate to the actual rates of the student loan portfolio. We do not attempt to average the interest rates of the actual loans of student in the completion cohort, but rather take a simpler approach of taking an average of the interest rates on Direct loans over a span of years when completers were likely to borrow. This simpler approach yields much greater transparency and predictability to institutions in how their D/E rates will be determined, while still being likely to accurately reflect borrowing costs in most cases.

Changes: None.

Comments: Commenters suggested that the Department use the same amortization period for all programs. These commenters argued that when borrowers repay over a longer period, this is a sign that the debt is less affordable. Specifically, commenters argued that the 10-year standard should be used across programs regardless of level.

Discussion: Section 668.403(b), provides for three different amortization periods, based on the credential level of the program for determining a program's annual loan payment amount. This schedule will account for the fact that borrowers who enrolled in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have incurred more loan debt than borrowers who enrolled in lower-credentialed programs and, as a result, are more likely to select a repayment plan that would allow for a longer repayment period. The longer periods for higher level programs also

correspond empirically with the fact that borrowers in longer programs tend to take more time to repay. A further benefit of the longer amortization period for longer programs is that it provides some adjustment for the fact that longer programs often have higher earnings growth beyond the 3-year period used to measure earnings for most programs. As noted above, waiting longer to measure earnings results in the data being more backward looking and less recent. The longer amortization period provides some adjustment without sacrificing the recency of the metric's availability.

Changes: None.

Comments: One commenter proposed that the Department use a fixed interest rate to calculate median debt for the D/E rates. The commenter noted that interest rates are out of the control of the institution and not an indicator of education quality. The commenter proposed that a fixed interest rate be used with the most generous loan payment option available to students in the cohort.

Discussion: The D/E rates are designed to indicate whether graduates can afford to repay their educational debt. Therefore, the calculation uses interest rates over the years that students were likely to have borrowed to calculate median debt, since those interest rates affect the debt service costs that students will need to pay.

Changes: None.

IDR and Debt Payment Calculations

Comments: Several commenters argued that the Department should consider income-based repayment options available to students in the D/E rates calculation. A few commenters noted the loan payment calculation used for the D/E rates is substantially higher than the real monthly payments that borrowers are subject to because of these repayment programs. To improve accuracy of this estimate, and fairness of the regulation, these commenters suggested the Department use expected payments under an income-driven repayment (IDR) plan for D/E rates calculations. By not including repayment plans, these commenters asserted that there is a misconception about the ability of an institutions' graduates to satisfactorily make their loan payments.

A few other commenters argued that the availability of income-based and income-driven repayment programs makes all student debt affordable. The same commenters argued that as long as these programs exist (and students enroll in these programs) the D/E metric is not necessary because all student debt is affordable to students through these

repayment plans. One of these commenters argued that use of the D/E rates to indicate affordability is therefore arbitrary and capricious because loan payments for students in repayment plans do not the measures of debt used in the D/E metric. Several commenters noted that the availability of the Revised Pay as You Earn (REPAYE) program renders the D/E rates misleading since no borrower is actually required to pay off loans under a standard repayment plan.

Similarly, another commenter suggested that the D/E measure should incorporate loan repayment programs such as the National Health Service Corps Loan Repayment Program (LRP), Indian Health Service LRP, Health Professions LRP, and the Veterans Affairs Specialty Education LRP. According to this commenter, failure to consider these repayment programs may adversely affect medical schools whose students commit to public service.

Discussion: As we noted in the NPRM, income-based and income-driven repayment programs partially shield borrowers from the risks of not being able to repay their loans. However, such after-the-fact protections do not address underlying program failures to prepare students for gainful employment in the first place, and they exacerbate the impact of such failures on taxpayers as a whole when borrowers are unable to pay. Not all borrowers participate in these repayment plans; where they do, the risks of nonpayment shift to taxpayers when borrowers' payments are not sufficient to fully pay back the loans they borrowed. This is because borrowers with persistently low incomes who enroll in IDR—and thereby make payments based on a share of their income that can be as low as \$0—will see their remaining balances forgiven at taxpayer expense after a specified number of years (*e.g.*, 20 or 25) in repayment. For these reasons, the Department disagrees with the commenters who believe that no debt limit should matter for the D/E metric to make the program affordable to students.

As explained in the NPRM, the purpose of the D/E rates is to assess whether program completers are able to afford their debt, including program completers who do not enroll in IDR or other repayment plans intended to help protect students from excessive payments. The Department recognizes that some repayment plans we offer allow borrowers to repay their loans as a fraction of their income, and that this fraction is lower for some plans than the rate used to calculate the D/E rates. However, we decline to set acceptable

program standards at a rate that would allow institutions to encumber students with even more debt while expecting taxpayers to pay more for poor outcomes related to the educational programs offered by institutions. Instead, we view the D/E rates as an appropriate measure of what students can borrow and feasibly repay. Put another way, under the D/E rates calculation, the maximum amount of borrowing is a function of students' earnings that would leave the typical program graduate in a position to pay off their debt without having to rely on payment programs like income-driven repayment plans.

The Department understands that other debt repayment plans for particular fields exist as well, but views these analogously to the Department's own IDR plans. Moreover, these loan repayment programs, while generous, affect only a small fraction of borrowers. For example, in fiscal year 2021, the National Health Service Corps made fewer than 7,000 new Loan Repayment Program awards and the Nurse Corps made about 1,600 LRP awards.¹⁴² The Association of American Medical Colleges estimates that there were about 21,000 graduates of US medical schools in per year in the most recent few academic years, and during the same time period, the number of first time candidates taking the national Nurse Licensing Exam (NCLEX-RN) has totaled over 160,000 annually.¹⁴³ This means that these loan repayment programs are used by only a fraction of students.

Changes: None.

D/E Metric

Support

Comments: Two commenters noted that the D/E metric is a critical means to identify programs that do not serve

¹⁴² The NHSC Loan Repayment Program (LRP) currently includes LRP programs for clinicians working at Indian Health Services facilities. See Indian Health Service (n.d.). NHSC Loan Repayment Program. U.S. Department of Health and Human Services Indian Health Service (retrieved from <https://www.ihs.gov/loanrepayment/nhsc-loan-repayment-program/>). U.S. Department of Health and Human Services, Health Resources and Services Administration (2021). Report to Congress: National Health Service Corps for the Year 2021 (available at <https://bhwh.hrsa.gov/sites/default/files/bureau-health-workforce/about-us/reports-to-congress/report-congress-nhsc-2021.pdf>).

¹⁴³ See Association of American Medical Colleges (2022). 2022 FACTS: Enrollment, Graduates, and MD-Ph.D. Data (<https://www.aamc.org/data-reports/students-residents/data/2022-facts-enrollment-graduates-and-md-ph-d-data>). National Council of State Boards of Nursing (2023). 2022 NCLEX® Examination Statistics (Vol. 86). National Council of State Boards of Nursing, Inc. ISBN 979-8-9854828-2-9 (retrieved from www.ncsbn.org/public-files/2022_NCLEXExamStats-final.pdf).

students. According to these commenters, it will help protect students, particularly students from marginalized communities, from entering low-value programs.

Discussion: We thank commenters for their support.

Changes: None.

Comments: One commenter noted that D/E rates can be accurately and rapidly calculated using data available to the Department, are easy for students and institutions to understand, and are hard for institutions to manipulate or circumvent.

Discussion: We thank the commenter for their support.

Changes: None.

General Opposition

Comments: One commenter noted that graduate students are sophisticated and should be able to make decisions on their own based on evaluating costs and benefits. Allowing the Federal Government to signal its opinion or remove funding unfairly limits a student's right to choose the program according to this commenter.

Another commenter suggested that the D/E measure should not apply to graduate programs, since their undergraduate experiences affect future earnings.

Discussion: Graduate debt is growing as a share of Federal borrowing. While we might hope that graduate students' relative sophistication would result in fewer students taking on unaffordable debt, the data described in the RIA show that many graduate programs still lead to unaffordable debt. This problem may partially be addressed by the transparency provisions in subpart Q of these final regulations, which would for the first time produce accurate information on the net prices of graduate degree programs to better inform students about costs. Given the very high debt levels associated with some graduate programs, however, we seek to protect borrowers and taxpayers from all programs that consistently leave most of their graduates with unaffordable debts. Among non-GE programs, we will provide D/E and EP information to students and require acknowledgments at high-debt-burden programs to make sure students have this information when they make their choices. GE programs that consistently leave students with high debt-burdens will lose eligibility to participate in the title IV, HEA programs.

With respect to the influence of undergraduate experiences, students pursue graduate education expecting that they will benefit from additional education. The rule requires

measurement only of the debt students acquire at the graduate level when measuring the D/E rates of graduate programs yet credits the program with the entirety of a students' earnings (as opposed to the increment to those earnings added by attending the graduate program). Regardless of the extent to which students' undergraduate experience influences their earnings, their graduate debt should be affordable given what they can earn following program completion.

Changes: None.

Comments: One commenter contended that the rule rewards low graduation rate programs with higher typical salaries than would be the case with an acceptable graduation rate. According to this commenter, the Department should downward adjust earnings levels for low graduation rate programs and upward for higher graduation rate programs.

Discussion: The median debt and earnings information underlying the metrics in the rule are based on completers. For debt, the goal is to capture the full amount students need to borrow to obtain a credential. For earnings, we use completers' median earnings to better reflect the value of fully completing the program. While we agree in principle that accounting for completion rates may be additionally useful, in practice it is infeasible to measure program level completion outcomes given that students often do not enroll in a specific program at entry (*i.e.*, students enrolling in longer programs with overlapping general education requirements often begin undeclared), making it impossible to define completion cohorts. More generally, we believe the measures as defined are a reasonable compromise in measuring the debt and labor market costs of students who complete a program—a group of students where there can be less debate about whether the program should be responsible for their outcomes.

Changes: None.

Comments: One commenter proposed that D/E should include other types of debt, such as automobile loans and credit cards.

Discussion: The Department cannot definitively tie non-student loan debt that students acquire, such as automobile loans and credit card debt, to the student's pursuit of a degree. The D/E metric aims to measure how well a GE program prepares students for gainful employment in a recognized occupation. Data on the other debt students might incur is not readily available to us and, more importantly, is

outside of the scope of our regulatory authority.

Changes: None.

Comments: A few commenters warned that it is unclear how D/E is calculated for undeclared students.

Discussion: The D/E rates are calculated based only on students who graduate from a program. Students initially undeclared are counted in the program where they graduate at a given credential level, and the debt they accumulate at that credential level is included in their total debt.

Changes: None.

Comments: Several commenters contended that the D/E metric prevents institutions from developing new programs, because an institution that offers a new program will not have students completing within 6 years.

Discussion: In instances where a program does not have data to calculate the D/E rates, such as for a new program, there would simply be no D/E metric available. There are no eligibility consequences for a program with no D/E or EP rates available. Additionally, we do not believe the rule would discourage an institution from creating new programs unless the institution expected the program to eventually lose eligibility due to high-debt burdens or low-earnings.

Changes: None.

Comments: Two commenters argued that it is unfair to not allow programs to improve or reintroduce a program once it has failed.

Another commenter contended that the Department should not penalize an institution if it responsibly ends a program that produces failing D/E rates in its final years.

Discussion: The rule allows institution to report transitional D/E rates based on median debt outcomes for completers in the two most recent award years for a temporary period. This affords institutions the opportunity to improve their programs in response to the metrics produced for their programs. After this transitional period where institutions can improve their measures, the metrics become more backward-looking, so this opportunity is diminished.

If a program loses eligibility under the rule or if an institution voluntarily discontinues a failing program, the institution may not launch a similar program for 3 years. As we discussed in the NPRM, we intend for this waiting period to protect the interests of students and taxpayers by requiring that institutions with failing GE programs take meaningful corrective actions to improve program outcomes before reintroducing a similar program with

Federal support. The 3-year period of ineligibility closely aligns with the ineligibility period associated with failing the CDR, which is the Department's longstanding primary outcomes-based accountability metric on an institution-wide level.

Changes: None.

Comments: One commenter expressed concern about how D/E will be calculated for colleges and programs that do not participate in the Direct Loan program due to the low cost of tuition and fees.

Discussion: The median debt for programs whose students receive no Direct Loans will be zero. This means that these programs will pass D/E.

Changes: None.

Comments: One commenter suggested that students already enrolled in a failing program should be allowed to receive title IV, HEA aid until they complete the program.

Discussion: The Department is sympathetic to the potential disruption for students who may continue to be enrolled in a program that loses title IV, HEA eligibility. Institutions must issue warnings to any student in or interested in a program if the program fails one of the GE metrics and, therefore, faces a potential loss of Title IV, HEA eligibility if it fails again. Hopefully this will both allow students a chance to finish their studies, at least in shorter programs, or to make plans to transfer if the program loses funding.

The Department believes, however that most students will be better served by transferring to a better performing program rather than further accumulating debt or spending time in a program where they will be unlikely to earn enough to manage it, or not accumulate skills to earn more than a high school graduate. Analyses presented in the RIA suggest that most students will have other better options to which to transfer.

Changes: None.

Comments: Several commenters contended that the GE rule should allow for transitional D/E rates for GE programs for a multiyear period after the regulation takes effect.

Discussion: All programs will have transitional rates that will be based on the debt of completers in more recent years for 6 years.

Changes: We have modified § 668.408(c) to give all programs the option to report transitional rates for the first six years after the rule is in effect. While we believe that most institutions with GE programs have experience reporting similar information under the 2014 Prior Rule, this change offers flexibility and alleviates burden for

some institutions to avoid reporting on cohorts that completed six years or more previously.

Comments: One commenter recommended that since the 2014 GE rule only included the D/E metric, passage of either D/E or EP should be sufficient for establishing that a program prepares students for gainful employment. Other commenters suggested that we require all programs to pass both measures, instead of some being required to just pass one.

Discussion: As we explain in the NPRM¹⁴⁴ and elaborate upon above, the EP measure captures distinct aspects of how programs prepare students for gainful employment. The EP is based in part on statutory provisions ensuring that postsecondary programs build on the skills learned in high school and enhance a students' earnings capacity regardless of how much they borrow. Whatever students' post-college earnings are, it is important that their debt levels are affordable and in reasonable proportion to their earnings. GE programs must pass both metrics to avoid consequences. Career training programs that fail either or both metrics in a single year will be required to provide warnings to students that the programs could be at risk of losing eligibility for title IV, HEA funds in subsequent years. Programs that fail the same metric in two of three consecutive years would have lose their eligibility. The two metrics together create the strongest framework for protecting students and taxpayers.

Comments: One commenter raised concerns that institutions cannot compel graduates to seek occupations in the field for which they train.

Discussion: The purpose of these regulations is to increase the likelihood that students entering career training programs are given the skills and credentials to repay their student loans and earn more than they would have had they not attended a postsecondary program. Many students may find employment in an occupation that differs from what the program prepared them for, and we do not penalize programs for that.

Changes: None.

Exclusion or Inclusion of Certain Student Populations

Comments: One commenter contended that the earnings component of the D/E rates calculation should exclude students who have a title IV, HEA loan in military-related deferment status. The commenter believed that including outcomes for such students in

the D/E rates would be arbitrary and exceed the Department's statutory authority, because such students' military earnings provide no information about the quality of the program. The commenter recommended that the Department adopt the approach in the 2014 Rule and exclude such students.

Discussion: The Department disagrees. As we acknowledged in the NPRM, the D/E rates calculation in these regulations differs from the 2014 Rule in certain respects. In the 2014 Prior Rule, the Department reasoned that students with military deferments should be excluded from the D/E rates calculations because they could have less earnings than if they had chosen to work in the occupation for which they received training. The final rule went on to state a student's decision to enlist in the military is likely unrelated to whether a program prepares students for gainful employment, that it would be unfair to assess a program's performance based on the outcomes of such students, and that the Department believed that this interest in fairness outweighed potential impact on the earnings calculations and the number of students in the cohort period.¹⁴⁵

However, we cannot now conclude with confidence that the earnings of military personnel are unrelated to the postsecondary programs that they completed. First, the latest Quadrennial Review of Military Compensation (QRMC) shows how strongly correlated educational attainment is with pay grade for both enlisted personnel and officers. For example, in 2017 while none of the enlisted personnel at the lowest reported pay grade (E-2) had a bachelor's degree or more, 55 percent of those in the highest pay grade for enlisted personnel had at least a B.A. Similarly, virtually all officers (91 percent) at the lowest pay grade had a bachelor's degree, while 80–100 percent of the officers in the top pay grades had an advanced degree, with that share increasing with the pay grade. Educational attainment is clearly a key component of pay grade in the military, and program quality is a key factor in attainment.¹⁴⁶

More broadly, program quality determines the skills a student will receive and have available to them on the job. Whether that job is in the military or in some other field with a

¹⁴⁵ 79 FR 64889, 64944–45 (Oct. 31, 2014).

¹⁴⁶ See tables 2.1 and 2.1 in Department of Defense (2020). Report of the Thirteenth Quadrennial Review of Military Compensation, Volume I, Main Report (https://militarypay.defense.gov/Portals/3/QRMC-Vol_1_final_web.pdf).

¹⁴⁴ 88 FR 32300, 32325 (May 19, 2023).

step-and-lane-style pay schedule, skill is still an important determinant of job success and pay, if for no other reason than more skilled employees (or military personnel) have more opportunities for advancement. That can be as simple as promotion to Officer, but it also includes opportunities such as the military's opportunities for service members to be trained in designated military skills or career fields, which require special advanced training or educational credentials in key fields that military seeks to promote. Training in these fields can earn personnel a bonus upon completion of their role, plus whatever career advancement comes from a military career in those valued fields.¹⁴⁷

Furthermore, including these earners would likely raise the median income measured for their particular program because this group of program completers are demonstrably employed, and because, as the latest QRMC demonstrates, the military has long sought to (and surpassed) a goal of paying service members at a level equivalent to the 70th percentile of comparably educated and experienced civilians. Nevertheless, there is still a possibility that this group of program completers may have earnings that do not otherwise support the debt they incurred. Servicemembers should receive the same consumer protections afforded to other student borrowers from their GE program completer cohort. Accordingly, the Department has concluded that their earnings should be reflected in the data that we use to provide information about and evaluate GE programs supported by title IV, HEA student assistance. This conclusion is reasonable and, as we explained in the "Reliance Interests" section of the NPRM, this approach does not implicate any significant reliance interests.

Changes: None.

Comments: One commenter suggested that the Department should consider programs with fewer than 30 students as "passing due to insufficient data." The commenter contended that this label may help to mitigate the incentive for schools to cap program enrollment at 29 students.

Discussion: In principle, the Department agrees that "passing due to insufficient data" is one appropriate label for programs that have too few completers in the applicable cohort for metrics to be issued. That label conveys potentially helpful information, and we

may use that or similar language to describe programs in the future. We note that these rules specify the conditions under which programs pass or fail the D/E and EP metrics (§ 668.402), along with the conditions under which the Department does not issue the D/E rates or the EP measure because of an insufficient number of completers (§§ 668.403(f) and 668.404(d)). Those rules do not require the Department to use particular labels to describe programs that are subject to these metrics. At the appropriate times and consistent with these rules, the Department will make the necessary choices regarding the details of the Department's program information website, through which student acknowledgments will be administered (§§ 668.407(b) and 668.605(c)(3), (g)), as well as the warnings with respect to GE programs (§ 668.605).

Changes: None.

Comments: One comment expressed concern about how to calculate the data for students that do not complete their program of study because they choose to enter the workforce once they gain a certification in a program.

Discussion: Students who do not earn a credential are not counted in the earnings or debt metrics for a program. If a student does not complete an associate degree after obtaining a certificate, that student would be counted in the completer cohort for the certificate program. We may expect that student's earnings would be less than their earnings would have been if they completed the associate program, but so, too, would their debt. Regardless, we expect the majority of students completing a certificate to out-earn individuals with only a high-school diploma and to not have a high debt-burden.

Changes: None.

Discretionary D/E Measures

Comments: One commenter posited that D/E has a low correlation with a measure of return on investment (ROI) that the commenter themselves created. The commenter then compares pass/fail under GE to pass/fail under their personal formula to assign whether they think a program "correctly" or "incorrectly" passes or fails. The commenter uses such comparisons to recommend changing amortization periods for graduate students and that the D/E rate should be assessed on the basis of the annual earnings rate alone.

Discussion: We appreciate the commenter's suggestions, and analysis of how this rule's parameters could be modified to better align its pass/fail outcomes with the commenter's own

estimates of program-level ROI. However, there are numerous issues with the commenter's methodology that do not make it an appropriate standard for judging whether the metrics used and pass/fail outcomes in GE are "correct" or "incorrect." This includes several self-acknowledged reasons why the methodology systematically overestimates or underestimates ROI for different types of programs, and assumptions that students' earnings trajectories relative to their peers do not change over time. In addition, the commenter's attempt to create counterfactual wages relies on adjustments made on very broad educational credential by field of study groups that do not reflect specific programs well.

Changes: None.

Comments: Several commenters argued that the evidence cited for the use of the 20 percent discretionary income threshold is not strong. Several commenters note that the 20 percent discretionary D/E threshold can be traced back to a 2006 report from Economists Sandy Baum and Saul Schwartz. The commenters asserted that discretionary income is always defined arbitrarily (*i.e.*, attempts to draw distinctions between discretionary and nondiscretionary expenditures are fraught with difficulty). Other commenters contended that the (annual) D/E threshold is based on affordability of mortgage rates and should not be used for student debt.

Discussion: As the commenters noted, the 20 percent discretionary D/E threshold is based on research conducted by Sandy Baum and Saul Schwartz. Their research proposed benchmarks for manageable debt levels, and the authors' research suggested that no student should have loan payments exceeding 20 percent of their discretionary income. In subsequent commentary one of the authors argued that, if anything, a 20 percent discretionary threshold for the median borrower is too permissive and a stricter standard would be justified.¹⁴⁸ Although the starting point for their research was in the context of the affordability of mortgage rates, their overall point stands—that it would not be affordable for borrowers to have student debt-service ratios beyond what is in the GE rule.

Changes: None.

Comments: One commenter asked how a school could pass the discretionary debt-to-earnings rate and

¹⁴⁷ Department of Defense, Under Secretary of Defense (Comptroller) (n.d.). DoD 7000.14—R: Military Pay Policy—Active Duty and Reserve Pay, Volume 7A (https://comptroller.defense.gov/Portals/45/documents/fmr/Volume_07a.pdf).

¹⁴⁸ See <https://www.urban.org/urban-wire/devos-misrepresents-evidence-seeking-gainful-employment-deregulation>.

not the annual debt to earnings measure. According to this commenter, if reasonable scenarios do not exist, this ratio is irrelevant and does not provide a reasonable additional option to schools.

Discussion: We carefully explain the relationship between the two rates in the NPRM (see Figure 1 from the NPRM and the surrounding text). Many programs with higher levels of earnings pass the discretionary D/E measure but not the annual D/E measure.

Changes: None.

D/E Rates Thresholds

Comments: A few commenters argued that the thresholds align with other measures of hardship: Borrowers with student loan payments above 8 percent of income or 20 percent of discretionary income experienced greater hardship than those with payments below these thresholds.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Many commenters requested that the Department return to the D/E rate thresholds of 12 percent annual D/E and 30 percent annual discretionary D/E that were used in the 2011 and 2014 Prior Rules. Some of these commenters posited that the changes from those thresholds to the D/E rate threshold in the NPRM is arbitrary and capricious.

Several other commenters objected to the lack of inclusion of the “zone” as in the 2014 Prior Rule, asserting that without the zone, programs could fail because of fractions of a dollar in the GE calculation or that programs do not have the space to make necessary program changes.

Discussion: The Department considered these concerns and decided to base the thresholds upon expert recommendations and mortgage industry practice—that is, the 8 and 20 percent thresholds for annual and discretionary D/E, respectively. The 12 and 30 percent thresholds used in the “zone” were selected by adding a 50 percent buffer to these evidence-based thresholds, so as to give institutions that were “close” to the D/E thresholds an additional year to potentially improve their performance.

In the final rule, the Department has adopted a transition period where institutions can report debt information for more recent completion cohorts. This provision is similar to a transition provision that was included in the 2014 Prior Rule under 34 CFR 668.404(g) that permitted institutions to use updated program costs in the outcome calculations for 5 to 7 award years,

depending upon the length of the program. The transition period for these regulations will allow any improvements in the cost structure of programs to more rapidly be reflected in institutions’ D/E rates.

Changes: None.

Comments: A few commenters stated that the 8 percent annual D/E threshold would preclude for-profits from offering BAs and eliminate many Associate of Arts (AA) programs. The commenters believe these institutions will be forced to lower tuition; therefore, this imposes a price cap on for-profit and vocational institutions.

Discussion: Programs must pass either the annual D/E threshold of 8 percent or the discretionary D/E threshold of 20 percent. For programs with higher income levels, the discretionary rate is more likely to apply, which allows median debt levels to be higher relative to median earnings levels. The RIA shows that the majority of proprietary associate and bachelor’s programs do not fail the D/E metrics. We disagree with the commenters’ assertion that institutions will be forced to lower tuition to pass the D/E rates, as the final rule allows institutions to set tuition or find additional student resources so that students’ borrowing levels are reasonable in light of their typical earnings outcomes and so that students do not take on more debt than they can reasonably manage.

Changes: None.

Programs With Low Borrowing Rates

Comments: Some commenters suggested that the Department should not subject programs with only a few borrowers to the D/E metric or should use a different metric for them. According to this commenter, a program with a small percentage of borrowers overall that does not meet the debt to earnings ratio would jeopardize the Pell Grant eligibility for the entire program.

Discussion: Programs with few borrowers are very unlikely to fail the D/E rates measure. We calculate median debt among all title IV, HEA recipients, including those who receive only Pell grants. As a result, if the majority of program completers do not borrow, the median debt of program completers will be zero. The program will, therefore, pass the D/E metric. This acknowledges the affordability of programs where many or most students do not need to borrow to attend the program. As a result, we see no risk that programs with few borrowers will lose title IV, HEA eligibility as a result of the D/E provisions of rule.

Changes: None.

Comments: One commenter believed that non-borrowers will not look at the D/E ratios because they are not relevant to them.

Discussion: The D/E metric is primarily a measure of debt affordability, capturing the share of a typical graduate’s annual earnings that will need to be devoted to loan payments. Under the transparency provisions in § 668.407, only prospective students will provide acknowledgments prior to enrolling in an institution. While ultimately those with no intention of borrowing may not be concerned with potential loan payments, prospective students may find information about the D/E rates of different programs helpful as an indicator of the labor market success of those programs’ graduates, the costs of the programs, or both. More importantly, the information may inform their choice of whether to enroll in the program, and if so whether to borrow to attend. The rule will create more transparency on earnings outcomes and the net price of programs, however, and we expect that non-borrowers will find that information most salient. Moreover, we also expect the D/E ratios to be relevant to borrowers.

Changes: None.

Earnings Premium Metric

General

Comments: Many commenters expressed support for the EP measure as a “common sense” threshold to measure completer earnings against.

Discussion: We thank commenters for their support.

Changes: None.

Comments: Many commenters suggested that the EP measure is arbitrary, not sufficiently studied, and not backed by research evidence.

Discussion: The Department believes that the EP threshold, which uses the median State-level earnings of high school graduates in the labor force, is an intuitive benchmark for both policymakers and prospective students. Comparison to the earnings of those with only a high school diploma has long been a measure of the effectiveness or value of completing a given post-secondary credential in research literature.¹⁴⁹

¹⁴⁹ See for example, see Goldin, Claudia & Katz, Lawrence F. (2010). *The Race Between Education and Technology*. Cambridge: Harvard Univ. Press. Baum, Sandy (2014). *The Higher Education Earnings Premium*. Urban Institute (www.urban.org/sites/default/files/publication/22316/413033-Higher-Education-Earnings-Premium-Value-Variation-and-Trends.PDF)—among other numerous examples.

Changes: None.

Comments: One commenter suggested that the EP threshold should be higher to account for a student's need to repay the loan debt incurred in connection with the credential.

Discussion: The Department recognizes that calculating a “net earnings premium” that subtracts from the EP some measure of the (amortized yearly) costs of college or debt service payments may provide a reasonable measure of the financial gain to completing a program in some contexts. However, under the rule, we will use the EP measure to assess whether students who complete a program are better off, strictly in terms of their earnings, than individuals who never attended a postsecondary program. The calculation of this measure is unaffected by the costs students might incur to attend the program. The measure applies even for a student whose education expenses might be entirely covered by grant aid. We note that the D/E rates are intended to assess a cohort's ability to afford the debt they borrow to pay the direct costs of attending the program, so we do not additionally account for program costs in the EP measure.

Changes: None.

Earnings and Location

Comments: Many commenters suggested that earnings vary substantially within a given State by urbanicity. These commenters suggested that we adjust the D/E rates or EP calculations for programs serving

students in rural areas. Some other commenters suggested using metropolitan or micropolitan statistical areas (MSAs) to better distinguish between earnings potential for completers within a given State.

Discussion: Though many commenters expressed concerns about urban/rural divides in economic opportunity, their proposed solutions often involved calculating earnings premiums at the metropolitan area level. There are a few reasons the Department sees this as a flawed approach. First, as Office of Management and Budget (OMB) Bulletin No. 23–01 outlines, Core Based Statistical Areas, such as Metropolitan Statistical Areas (MSAs) “do not equate to an urban-rural classification; many counties and county-equivalents included in Metropolitan and Micropolitan Statistical Areas, and many other counties, contain both urban and rural territory and populations.”¹⁵⁰ There is plenty of variety in the urban character of local areas even within area designations as small as the MSA, and so calculating earnings estimates at that level may not capture differences in labor market opportunities by population density or other characteristics of an area often associated with the urban/rural divide.

The same OMB bulletin further warns that, in keeping with the Metropolitan Areas Protection and Standardization (MAPS) Act of 2021, agencies should be hesitant to use CBSA designations for the administration or regulation of non-statistical programs and policies. Our

view is that while MSAs provide a useful approximation to major and minor urban centers in a State, they do not measure a relevant unit for the purposes of this regulation. This is especially true in the context of postsecondary education, where students often travel outside of their home MSA to attend school and, as a result, are likely to have considerable cross-MSA mobility after graduation.

Our view is informed by an analysis the Department conducted to assess the viability of measuring earnings at the metropolitan area level. To understand the implications of such a change, we first examined how the earnings threshold would vary across each State if it varied for metropolitan and non-metropolitan areas. The IPUMS USA version of the ACS 5-year sample for 2019 adds the necessary information to the PUMS data to divide households into different geographic classifications based on the metropolitan status of the area they live in, which the IPUMS USA describes in this way: “[the relevant field] indicates whether the household resided within a metropolitan area and, for households in metropolitan areas, whether the household resided within or outside of a central/principal city.” Table 1.4 below shows how earnings thresholds would vary if they were set at the median earnings for the same population (high school graduates aged 25–34 who were in the labor force in the previous year), divided by which type of metropolitan area those individuals live in.

TABLE 1.4—MEDIAN INCOME FOR HS GRADS 25–34 IN LABOR FORCE, BY STATE AND METRO STATUS

	Metropolitan status					
	Mixed met. status	Not in met. area	In met. area: central city	In met. area: not central city	Met. area: mixed central city status	Overall
Alabama	21,582	23,000	21,177	29,202	22,445	22,602
Alaska	30,000	21,307	29,675	.....	.....	27,489
Arizona	21,582	18,111	26,000	26,471	25,453	25,453
Arkansas	22,527	21,902	.....	30,000	25,569	24,000
California .....	.....	25,000	26,073	26,178	26,073	26,073
Colorado	27,500	30,000	27,000	30,107	29,322	29,000
Connecticut .....	.....	31,961	22,000	29,202	25,899	26,634
Delaware .....	.....	.....	.....	26,634	25,453	26,471
District Of Columbia .....	.....	.....	21,582	.....	.....	21,582
Florida	22,373	21,582	22,445	24,819	24,000	24,000
Georgia	24,000	22,700	24,000	25,030	23,000	24,435
Hawaii	30,000	26,330	26,978	30,245	31,288	30,000
Idaho	23,883	28,000	.....	28,600	25,453	26,073
Illinois	25,036	26,073	22,297	26,634	25,000	25,030
Indiana	27,000	27,699	24,503	28,000	24,842	26,073
Iowa	30,000	26,073	29,202	.....	28,000	28,507
Kansas	25,569	24,819	23,438	30,544	26,073	25,899
Kentucky	26,073	22,945	20,221	25,359	23,012	24,397

¹⁵⁰ Executive Office of the President, Office of Management and Budget (2023). Revised Delineations of Metropolitan Statistical Areas,

Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the

Delineations of These Areas (OMB Bulletin No. 23–01). Washington, DC.

TABLE 1.4—MEDIAN INCOME FOR HS GRADS 25–34 IN LABOR FORCE, BY STATE AND METRO STATUS—Continued

	Metropolitan status					
	Mixed met. status	Not in met. area	In met. area: central city	In met. area: not central city	Met. area: mixed central city status	Overall
Louisiana	26,073	26,500	20,024	26,386	21,000	24,290
Maine		25,453		29,830	21,798	26,073
Maryland	26,634		22,900	29,136	26,500	26,978
Massachusetts	26,073		28,000	30,000	30,349	29,830
Michigan	23,988	23,740	17,000	25,030	24,000	23,438
Minnesota	30,000	27,116	25,569	31,154	27,116	29,136
Mississippi	21,000	20,562	17,613	25,569	19,963	20,859
Missouri	25,000	23,988	21,307	25,575	26,471	25,000
Montana	25,030	25,453			28,159	25,453
Nebraska	29,783	29,800	21,307	34,092	25,782	27,000
Nevada	23,417	31,961	25,030	27,489	27,387	27,387
New Hampshire	31,961	28,057	28,057	36,652	32,373	30,215
New Jersey			23,438	27,325	23,620	26,222
New Mexico	19,548	26,741	20,400	20,859	25,453	24,503
New York	26,000	24,405	24,700	26,978	25,000	25,453
North Carolina	23,000	22,661	22,399	23,417	23,417	23,300
North Dakota	33,598	27,116			27,116	31,294
Ohio	24,435	25,569	18,326	26,073	23,000	24,000
Oklahoma	25,030	25,453	25,453	27,800	26,000	25,569
Oregon	23,988	23,000	25,569	29,800	24,435	25,030
Pennsylvania	25,453	26,073	21,307	27,806	25,030	25,569
Rhode Island			23,417	26,978	30,000	26,634
South Carolina	24,718	20,362		25,860	22,900	23,438
South Dakota	30,000	25,030			29,202	28,000
Tennessee	23,438	22,900	19,500	26,438	23,824	23,438
Texas	25,899	25,000	24,405	28,000	25,899	25,899
Utah	26,471	30,215	19,709	29,202	28,765	28,507
Vermont		25,000			30,215	26,200
Virginia	25,453	20,566	25,000	27,699	24,435	25,569
Washington	27,534	25,300	30,000	31,961	29,202	29,525
West Virginia	21,582	22,661		30,544	24,196	23,438
Wisconsin	30,000	29,617	22,160	27,116	28,507	27,699
Wyoming	27,082	31,961				30,544
Total	25,453	25,000	24,280	26,654	25,453	25,453

Table 1.4 illustrates the challenge of this approach. To the extent that the commenters' main concern about State-level earnings thresholds is that institutions located outside of metropolitan areas would be disadvantaged, the data does not bear this out. In many instances, such as Alabama, Colorado, and Illinois, the earnings threshold outside of metropolitan areas would be higher than the current statewide standard (displayed in the "Overall" column). Because many low-income people live in cities, it is not consistently the case that metropolitan areas or central cities have higher median incomes for high school graduates than non-metropolitan

areas. What is more, this pattern is not consistent across States, suggesting there is not a systematic disadvantage for non-metropolitan areas that would justify switching to another standard that would have its own disadvantages.

Changes: None.

Comments: Several commenters suggested using a school's location in a Persistent Poverty County as an additional EP consideration. These commenters proposed that we could exclude schools located in these counties prior to the effective date of the GE rule from application of the EP measure, or we could adjust the EP threshold for programs in such counties downward by 20 percent.

Discussion: To understand the implications of this proposal, we assessed whether each program would be exempt based on being located in a Persistent Poverty County. To do this, we assigned each program to a county based on the location of its main campus and then determined whether that county was one of the 341 the Census Bureau determined to be persistently poor. We then examined which institutions, and which major cities housed institutions that would be exempt from the EP measure if we modified the rule in this way. Below is a list of the 15 largest institutions located in a county that is Persistently Poor under the Census's definition:

LARGEST INSTITUTIONS WITH MAIN CAMPUSES IN PERSISTENT POVERTY COUNTIES IN TERMS OF ENROLLMENT

Institution name	6-Digit OPEID	Total enrollment	Number of programs	Location
University of Florida	1535	45,996	324	Gainesville, FL.
Temple University	3371	40,537	255	Philadelphia, PA.
Fresno City College	1307	40,431	114	Fresno, CA.
University of Georgia	1598	35,589	296	Athens, GA.

LARGEST INSTITUTIONS WITH MAIN CAMPUSES IN PERSISTENT POVERTY COUNTIES IN TERMS OF ENROLLMENT—
Continued

Institution name	6-Digit OPEID	Total enrollment	Number of programs	Location
Texas A&M University	3632	34,089	252	College Station, TX.
Ohio University	3100	33,722	190	Athens, OH.
El Paso Community College	10387	31,413	81	El Paso, TX.
University of Texas Rio Grande Valley	3599	30,710	121	Edinburg, TX.
West Virginia University	3827	30,592	192	Morgantown, WV.
Georgia Southern University	1572	30,141	111	Statesboro, GA.
East Carolina University	2923	30,021	172	Greenville, NC.
Brigham Young University—Idaho	1625	29,243	84	Rexburg, ID.
Central Michigan University	2243	28,126	150	Mt Pleasant, MI.
University of Texas at El Paso	3661	27,759	141	El Paso, TX.

This list is a clear signal that the Persistent Poverty County exemption would be poorly targeted from the perspective of identifying institutions facing insurmountable economic conditions that would merit exemption from the general standard laid out in the NPRM. A number of the institutions on this list are major State flagship institutions with a strong track record of graduating large numbers of students

into stable and well-remunerated employment, suggesting that being located in these counties is not in fact outcome determinative for students in such institutions. The exercise reveals a limitation of the approach more generally, which is that these institutions draw on students from a variety of different locations, and their graduates go on to work in many

different places outside the county where the institution is located.

An additional datapoint that reveals that this measure of county poverty may not well capture economic conditions that dramatically impede labor market success for college graduates is the list of the 15 cities in Persistent Poverty Counties with the largest enrollment across all institutions and programs located there:

TOP CITIES IN PERSISTENT POVERTY COUNTIES IN TERMS OF ENROLLMENT

City	Total enrollment	Total number of programs
Philadelphia, PA	147,782	1,300
Fresno, CA	74,385	352
Brooklyn, NY	72,679	340
El Paso, TX	64,957	254
New Orleans, LA	58,608	532
Gainesville, FL	57,652	379
Bronx, NY	57,528	301
Baltimore, MD	51,202	542
Athens, GA	40,123	363
College Station, TX	34,089	252
Athens, OH	33,722	190
Richmond, VA	33,323	257
Statesboro, GA	32,570	163
Morgantown, WV	30,824	201
Edinburg, TX	30,710	121

This list includes a number of the country's largest cities, as well as a number of college towns. This gives us pause for two reasons: first, the inclusion of major cities with both a high incidence of poverty and vibrant economies suggests that the Persistent Poverty County construct is not designed to capture the kind of within-county inequality that allows deep poverty to coexist with strong labor markets for college graduates. Second, the existence of so many college towns suggests that the measurement of Persistent Poverty Counties may partly be picking up places where a large fraction of the area's residents are students who are in school and therefore not in the labor force or

working only part time, perhaps exaggerating the true extent of poverty in the area, or at least not reflecting its likely transience for the individuals being measured, who can expect a significant increase in their standard of living once they graduate from college.¹⁵¹ Additionally, in such cases we would not expect this more transient poverty measured in college towns to be an impediment to the earnings trajectory of students after college.

Changes: None.

¹⁵¹ See the Census's own analysis of poverty measurement in college towns here: www.census.gov/library/stories/2018/10/off-campus-college-students-poverty.html.

Economic Swings

Comments: Several commenters expressed concern about how earnings data would be affected by rapid downturns in the economy. Their concerns largely regarded the lag between the economic conditions at the time students incur their debts and when the earnings are assessed. Other commenters argued that the EP threshold could not accurately account for the labor market impact of national events, such as a pandemic, or for more localized labor market events, such as a natural disaster.

Discussion: The Department recognizes that economic conditions can change rapidly, that the earnings

premium for a program during a booming economy may differ from that premium during a downturn, and that students often make decisions about their educational investments without a full picture of the economy they will graduate into. Nonetheless, we believe the uncertainty around the broader economic conditions provides more reason to monitor and enforce rules around the economic outcomes for students who graduate from a given program through the EP measure. One benefit of a college education is some degree of insulation from economic downturns, and an important measure of program quality is the robustness of its graduates' employment outcomes to economic shocks.

The EP threshold is well suited to adjust to State or national disruptions to the labor market. The earnings of high school graduates tend to be much more pro-cyclical than those of college graduates. That suggests that the EP threshold will tend to fall more in economic downturns than will the median earnings of college graduates, therefore buffering the impact on program outcomes. It is possible that the EP threshold may not adjust for more localized labor market shocks at the sub-State level. The Secretary may, however, have authority under statute to waive or modify regulatory provisions that apply to institutions in disaster areas or that are significantly affected by disasters.¹⁵² The Department is not convinced that the rules here should be further adapted to address such exceptional circumstances.

Changes: None.

Earnings Threshold for Graduate Programs

Comments: A few commenters suggested using a different EP threshold for programs that issue graduate degrees. One suggestion was that we use the median earnings of bachelor's degree recipients who majored in the same field as the graduate degree.

Discussion: The 2019 5-year American Community Survey (ACS) contains information on bachelor's degree fields for survey respondents. These data are available in broad categories that generally align with similar CIP categories. The median earnings for those age 25–34 in the labor force with a bachelor's degree and a recorded major category is around \$46,000, reported in 2019 dollars. The range of median earnings by degree field is substantial, ranging from around \$28,000 to \$71,000.

The Department recognizes the logic of this approach, but also has identified some substantial disadvantages. For example, the data do not have enough individuals in the sample to provide robust State-level estimates of median earnings for all fields of study. Further, the use of comparable undergraduate earnings relies on the assumption that those who seek a post-baccalaureate credential have a bachelor's degree in a similar field. This may not be the case, however, particularly for degrees that are less reliant on the attainment of a specific set of undergraduate prerequisites. We currently lack comprehensive information on the bachelor's degrees typically obtained by graduate students in each field. The Department believes that using the same standard for the EP for graduate programs provides some degree of protection from programs not meeting even this low bar.

Changes: None.

ACS Earnings Measures

Comments: At least one commenter suggested that because the ACS relies on self-reported earnings, rather than on administrative data, these earnings metrics are not comparable.

Discussion: The ACS is a commonly used source of data on the experiences of a representative sample of Americans and a provider of many key economic indicators used by governments and researchers throughout the country. The Census Bureau regularly reviews the accuracy of the data. The survey relies on decades of experience from nationally recognized experts to develop and constantly improve the quality of the information provided through these surveys. The U.S. Census Bureau has researched the accuracy of ACS income data and found that income data from the ACS corresponds well with administratively reported earnings measures (e.g., via employer provided W2 forms) in IRS records.¹⁵³ The ACS is the best available data to measure the State-level earnings by education level used in the construction of the earnings threshold and the commenter did not provide an alternative source for comparable data.

Changes: None.

Comments: One commenter noted that recent earnings gains have been largely among those in the labor force without a post-secondary credential. When more recent years are used as the basis for the EP threshold, this could

raise the bar such that more programs fail.

Discussion: The Department believes that this comment highlights the value of using a dynamic measure from concurrent survey data, rather than a static benchmark. In cases where the economy improves for those without a post-secondary credential, the EP threshold could increase. If so, it appropriately sets a higher bar for college programs' performance.

Changes: None.

State and National Benchmarks

Comments: One commenter argued that standards for aid programs are set nationally—for example, a single maximum Pell grant amount, and standard national limits for undergraduate debt by level and dependency status. The commenter maintained that instituting different State-level thresholds for the EP by program location runs counter to this national framework.

Discussion: The earnings threshold is meant to proxy for the earnings levels that a typical student might obtain if they did not earn a postsecondary credential. As shown in the NPRM, these earnings vary across States for a variety of reasons related to local economic conditions, of the policies of States, Tribes, and Territories, and other factors. For example, States establish requirements for programs, licensing, or both. States, Tribes, and Territories also establish requirements for earning a high school diploma and its equivalency. Additionally, because State policy can have a substantial impact on both aid and on local labor market conditions, the Department believes that a State-level EP threshold is appropriate since the EP threshold is meant to measure the earnings that a student might have obtained had they not attended college.

Changes: None.

Comments: Some commenters thought that the proposed regulations needed to make more distinctions in outcomes based on the sizes of the institutions as well as the type of educational program and said the Department should consider the differences in the variety of jobs that students pursue from programs that are not specialized to lead into careers. Some concern was also expressed that there would be national earnings for programs compared to regional earnings information for high school graduates, as well as noting that many small programs would not be captured under the proposed regulations.

Discussion: The financial value transparency framework is intended to

¹⁵³ See www.census.gov/content/dam/Census/library/working-papers/2016/acs/2016_Ohara_01.pdf.

¹⁵² See, for example, 20 U.S.C. 1098bb(a)(2)(E).

provide information to students and families about average educational debt and average program earnings using the CIP codes for those programs. This provides students and families with useful information not only about different programs offered at one institution, but also to compare comparable programs offered at different institutions. Institutions are in the best position to determine what additional information will provide context about the impact the size of an institution may have on the educational experience and the job opportunities that may be available to program graduates. We note that the average earnings provided for a program are based upon that program's graduates and therefore have some direct connection to the institution whose programs are at issue. This provides a reasonable comparison with the earnings for high school graduates in that region.

Changes: None.

Comments: One commenter suggested that, in place of the State-level median earnings on ACS, the Department should use BLS data on the lower end of earnings for a given career path. For example, the EP threshold could be the 10th percentile of earnings for those who are employed in a given occupation.

Discussion: BLS's Occupational Employment and Wage Statistics contain national-level data on annual wages at the 10th, 25th, 50th, 75th, and 90th percentile, by industry code (North American Industry Classification System) and by occupational code (Standard Occupational Classification System). Across roughly 450 broad occupational codes, about 11 percent of occupational codes had 10th percentile earnings of less than \$25,000 (roughly the EP threshold). Using the BLS threshold would mean that most programs would likely be held to a higher threshold than they would under the ACS measure, and that the threshold would have no adjustment for geography. The Department intends the earnings threshold to represent a benchmark level of earnings that students would obtain had they not pursued a post-secondary credential. As

the comparison to BLS benchmarks suggest, this is a more conservative minimum bar on which to hold programs accountable. In our view it is the more appropriate threshold to determine whether career training programs are preparing their students for gainful employment.

Changes: None.

Comments: Two commenters suggested that students who earned higher-level credentials (such as a bachelor's degree or a graduate degree) were more likely to seek employment out of State.

Discussion: The earnings threshold is meant as a proxy for what students would earn had they not attended college, not to put graduates' earnings in context based on where they work after college. Accordingly, the high school earnings levels in the states where students come from is more relevant. We have clarified in the final rule that if fewer than 50 percent of the students in the program come from the State where the institution is located, the program would be subject to a national EP benchmark, rather than a State-level benchmark.

Changes: We revised the definition of "earnings threshold" at § 668.2 to clarify that national earnings are used if fewer than 50 percent of the students in the program come from the State where the institution is located, rather than where the students are located while enrolled.

Growth Measure for Earnings Premium

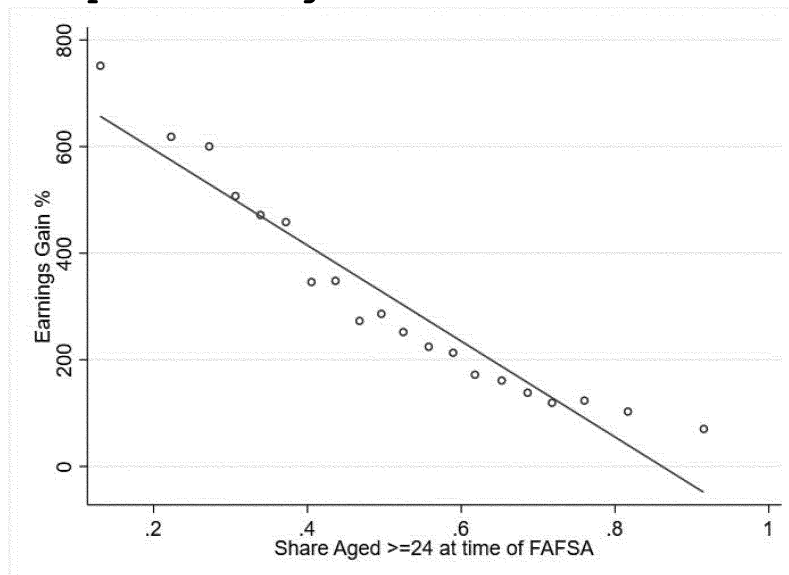
Comments: Many commenters suggested using earnings growth or an economic mobility measure, rather than an EP threshold. Commenters suggested that pre-enrollment earnings could be compared to post-enrollment earnings. If the post-enrollment earnings were higher (some comments suggested by 20 percent), then the program would pass the earnings test.

A couple of commenters also suggested that the programs could choose between being measured on the EP threshold or on the growth measure. Other commenters noted that students in cosmetology programs are often coming from very low wage jobs before entering school, so such a pre-post comparison would reflect favorably on these programs.

Discussion: The Department agrees that pre- and post-earnings comparisons are a theoretically attractive way to assess how well programs boost students' earnings potential. In practice, however, such a metric is infeasible to operationalize for the majority of programs.

For many programs, a large number of students have low pre-period earnings because, for example, they either do not work or work a limited number of hours, often because many are still enrolled in high school, prior to enrollment. All else equal, programs that enroll larger numbers of students without substantial prior attachment to the labor force (e.g., younger students) will have calculated earnings gains that are larger than programs with a smaller share of students without significant prior work histories. Using administrative Department data on undergraduate certificate programs eligible for title IV, HEA programs, we show in Figure 1.3 that (a) the estimated earnings gains using simple pre- post-earnings comparisons are unrealistically large; and (b) the proportion of younger students enrolled in the program predicts earnings gains. The estimated earnings gains using data where many students do not have pre-enrollment data tend to be illogically large, with the typical program having earnings gains estimates over 10 times what is commonly found in the research literature.¹⁵⁴ While some of this relationship could be because of differences across programs, the figure demonstrates that because younger students having no or less robust earnings records, they will mechanically have lower pre-period earnings and higher calculated earnings gains. The earnings gain metrics, therefore, yield heavily biased estimates that are meaningless in assessing program quality, and the bias greatly disadvantages programs serving older students.

¹⁵⁴ For a summary of results from selected studies related to returns to certificates, see Table 1 from Darolia, Guo, & Kim (2023). The Labor Market Returns to Very Short Postsecondary Certificates. IZA Discussion Paper 16081 (<https://docs.iza.org/dp16081.pdf>).

Figure 1.3: Pre-post Earnings Gains Measure and Student Age

One way to address this would be to measure earnings gains only for workers who appear to have high labor force attachment in the pre-period, as evident by exceeding some minimum earnings threshold. In practice, however, this would result in dramatically smaller numbers of completers that could be used to measure earnings gains, and dramatic reductions in the share of programs and enrollment covered by an earnings gain metric. Based on analysis of administrative data, we approximate that at least half of programs that had sufficient student volume to calculate median student earnings would no longer have sufficient data if students without labor force attachment were excluded. These limitations make an earnings-gain measure infeasible, at least give current enrollment patterns.

Changes: None.

Age Range for Measuring Earnings

Comments: Several commenters raised reservations about the timing of earnings measurement for the high school graduates to which each program's completers would be compared. These commenters worried that the 25 to 34-year-old demographic used to calculate median earnings for high school graduates was inappropriately old for comparison to recent program completers and would put their programs at a disadvantage because their program completers were younger and earning less.

Discussion: The preamble in the NPRM discussed the motivation for choosing the 25 to 34-year-old age range. Across all credential levels, the average age three years after graduation is 30 years old, and the range from 25th

to 75th percentile of program age (the interquartile range) is 27 to 34 years old. In other words, the typical graduate from most credential programs is within the comparison EP age range three years after graduation. Because of this, the Department declines to consider additional adjustments to the age cohort selected for the EP.

Changes: None.

Comments: A few commenters suggested using years of work experience, rather than age, as the measure for selecting a comparable sample of high school graduates for the EP.

Discussion: This approach is generally infeasible since detailed information on workers' years of experience is not available in the ACS, which is the source for the EP threshold. Moreover, it is unclear whether and how a comparable years of experience variable could be generated for graduates from a given program, especially for those who started a program of study mid-career.

Changes: None.

Comments: One commenter noted that some of their students enroll through an early college option. As a result, these students tend to be even younger than a typical cohort with a given credential.

Discussion: Students enrolled through a dual enrollment or early college program are typically not eligible for title IV, HEA assistance, and would not be included in an earnings or debt measure unless they obtained Federal financial aid after their high school graduation, or as part of a pilot program (i.e., the Department's Experimental Sites program). The Department reiterates that most programs have a

typical graduate whose age is within the age range used in the EP threshold.

Changes: None.

Demographics and the Earnings Threshold

Comments: Many commenters noted that program completers who are disabled, are incarcerated, or choose not to seek employment are included in the program's earnings data but would not be considered part of the labor force in the ACS, and therefore are not part of the EP threshold calculation.

Discussion: Individuals who are not seeking employment, or who are unable to find employment over a full year due to disability or incarceration or for other reasons, are not included in the calculation of the earnings threshold using ACS data. To the extent possible with administrative data, the Department also excludes those who are unable to work due to disability, as borrowers who have been identified as having a total and permanent disability are not included in the D/E or EP measure earnings. Further, individuals who are incarcerated and are enrolled in an approved prison education program are also excluded. The Department believes that those who enroll in a GE program are doing so with the intent of seeking employment after completing the program. This assumption is borne out by the fact that a much higher share of program graduates have positive earnings reported to the IRS than is true among individuals in a similar age range and with a college education in the ACS data.

Changes: None.

Comments: A few commenters contended that the median wage for

high school graduates should sample everyone who meets the age and credential criteria, including those who no longer participate in the workforce.

Discussion: The median high school earnings threshold includes those in the labor force (who have a job or report being available and looking for a job). As noted in the NPRM, the Department believes that most graduates of postsecondary programs, particularly those graduating from career training programs, are likely to seek work or be employed three years after graduation. A comparison to those who cannot work, or who have chosen not to work, is not appropriate in this case.

Changes: None.

Reporting—§ 668.408

General Support

Comments: A few commenters praised the Department for requiring reporting for both GE and non-GE programs, noting that doing so will make more information about educational programs available to the public regardless of institution type. Another commenter expressed support for extending financial value transparency reporting requirements to graduate-level programs, which account for a substantial portion of student borrowing.

Discussion: We appreciate the commenters' support.

Changes: None.

Benefits and Burdens

Comments: One commenter stated that they expect the long-lasting and regularly accruing benefits of the new rule, including better earnings and employment opportunities, lower student loan burden, and reduced taxpayer costs, will dwarf the reporting costs to institutions. The commenter also maintained that most of the compliance costs will be one-time investments to adapt to new reporting requirements, while the benefits will be persistent.

Discussion: We agree that the costs associated with the institutional reporting requirements in § 668.408 will be outweighed by the benefits of the financial value transparency framework, as well as the benefits of the GE program accountability framework.

Changes: None.

Comments: Many commenters opined that the proposed reporting requirements would be costly, time consuming, and burdensome for institutions, especially HBCUs, community colleges, rural institutions, and small institutions which operate with budgetary and staffing limitations.

One commenter urged the Department to limit new reporting requirements to the greatest extent possible. Another commenter highlighted the need to balance the interests of accountability and practicality to achieve desired outcomes while minimizing reporting burden. Some commenters note that, because the proposed transparency framework applies to all programs, and not just GE programs, it represents a large increase in reporting burden for institutions.

Discussion: We understand the commenters' concerns about limiting reporting requirements and recognize the need to appropriately balance the interests of accountability and practicality. The Department requires the reporting under the regulations to calculate the D/E rates and EP measure, as provided in §§ 668.403 and 668.404, and to calculate or determine many of the disclosure items, as provided in § 668.43(d).

We have carefully reviewed all of the required reporting elements and have determined that the benefits of the transparency and accountability frameworks made possible through the reported data sufficiently justify the associated reporting costs and burden for institutions. We further note that institutions will benefit from the reporting because the information will allow them to make targeted changes to improve their program offerings, benchmark their tuition pricing against similar programs at other institutions, and better promote their positive outcomes to potential students.

In terms of staffing limitations, we have not estimated whether or how many new personnel may be needed to comply with the reporting requirements. Allocating resources to meet the reporting requirements is an individual institution's administrative decision. Some institutions may need to hire new staff, others will redirect existing staff, and still others will not need to make staffing changes because they have highly automated reporting systems. We expect these costs to be modest since, as noted in the RIA, most institutions have experience with the data reporting for the rule for at least some of their programs under the 2014 Prior Rule or in responding to recent NCES surveys.

Changes: None.

Comments: One commenter opined that it is unclear what mechanism and process institutions would use to provide the large amount of data necessary to calculate D/E and EP metrics for nearly all eligible programs to the Department. Some commenters said that this additional burden and cost of complying would be complex and

require meticulous coordination, particularly to create the reporting process for the first year the regulations would go into effect. Several commenters cautioned that the regulations the Department proposed to improve institution accountability will have the unintended consequences of imposing significant reporting burdens on many institutions that provide strong outcomes for students who readily find good jobs in high demand fields.

Discussion: While we acknowledge that the overall number of programs will increase from those reported under the 2014 Prior Rule, we anticipate the process will largely remain similar. We also expect to add additional fields as appropriate to existing Departmental systems including the Common Origination and Disbursement (COD) system and the National Student Loan Data System (NSLDS).

The Department will provide institutions with guidance and training on the new reporting requirements, provide a format for reporting, and enable our systems to accept reporting from institutions beginning several months prior to the July 31, 2024, deadline so that institutions have sufficient time to submit their data for the first reporting period. The Department will also continue to look at ways this information can be routinely updated in the systems to reduce separate reporting burdens on institutions and will consider additional ways to simplify our reporting systems, as appropriate.

We are also exempting from these regulations, including the reporting requirements, institutions offering any group of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution with less than 30 completers in total during the four most recently completed award years. While these metrics are calculated at the six-digit CIP code level, for the purposes of qualifying for this exemption, we measure completers among all such programs at the four-digit CIP code level to avoid incentives for institutions to create new, smaller programs that are substantially similar in order to avoid being covered by these rules. Although this change will result in the loss of some beneficial information from these institutions independent of the D/E rates and earnings premium metrics, such as net pricing at specific credential levels, we believe this loss is acceptable when balanced against the alleviated reporting burden for many institutions. Approximately 700 institutions will benefit from this exemption, including about 85 percent of participating foreign

institutions and a diverse group of other institutions. This reduction of burden is achieved without diminishing the impact of the D/E rates or EP measure, as institutions exempted from the reporting requirement would not have sufficient numbers of completers to calculate those measures for any program. Moreover, the overall impact to students is minimal because institutions affected by this exemption constitute less than one percent of total title IV, HEA student enrollment and less than one percent of total title IV, HEA disbursement volume.

Changes: We have modified the exemptions under §§ 668.401(b) and 668.601(b) to exempt institutions that do not have any group of programs that share the same four-digit CIP code with 30 or more completers in total over the most recent four award years from these regulations, as described above.

Comments: A few commenters claimed that new reporting requirements would overly tax institutional financial aid and information technology staff who are already tasked with implementing and adapting to significant changes to Federal Student Aid processes and systems for the upcoming 2024–25 award year. One commenter noted that the 2014 Prior Rule presented technical difficulties in report coding for students enrolled concurrently in multiple GE programs and anticipated these challenges to be more significant with the potential for students to now simultaneously enroll in GE and non-GE programs. One commenter indicated that the proposed rule did not clearly explain how to handle reporting requirements for a student enrolled simultaneously in a GE program and an eligible non-GE degree program, recommending that the eligible non-GE degree program should take precedence for reporting because funds received by the student would be primarily used for that program.

A few commenters recommended that the data reported under § 668.408 be open, interoperable, and available for integration into State longitudinal data systems. One commenter noted that additional investments in State data systems will be necessary to ensure accurate reporting on the proposed metrics and requested that the Department encourage States to invest more resources into linked and integrated longitudinal data systems to reduce reporting burdens on institutions.

Discussion: We acknowledge that the reporting requirements in § 668.408 may, in some cases, increase the demands on an institution's information

technology staff and resources. We also recognize that institutions must adjust for technical and system changes under the Free Application for Federal Student Aid (FAFSA) Simplification Act and Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, effective for the 2024–2025 award year. The Department has provided, and will continue to provide, training and technical resources in advance of the implementation of the FAFSA Simplification Act and Future Act provisions.

We will also provide training and technical resources prior to the implementation of the Financial Value Transparency and Gainful Employment frameworks set forth in this final rule, which will address the handling of situations involving students simultaneously enrolled in multiple GE programs. We appreciate the request for a clearer explanation of how institutions should handle reporting requirements for a student enrolled simultaneously in a GE program and an eligible non-GE degree program. We will provide further clarification in sub-regulatory guidance and training in advance of the effective date of the reporting requirements under this final rule, and we will consider the request that eligible non-GE degree programs take precedence.

The Department agrees that data published under these provisions should be as transparent and interoperable as possible, while recognizing the necessary constraints to protect student privacy. We will continue to evaluate ways to make the published data as valuable as possible to researchers and State policymakers. We also agree that wise investments in State data systems may increase the value of data reporting requirements, and we encourage States to support linked and integrated longitudinal data systems as appropriate.

Changes: None.

Comments: One commenter noted that the proposed reporting requirements appear unnecessarily burdensome for institutions that do not participate in the Direct Loan program and whose graduates are therefore unburdened with student debt.

Discussion: The Department disagrees with the assertion that the reporting requirements are unnecessarily burdensome for institutions that do not participate in the Direct Loan program. A program should not be exempt from the reporting requirements because it has a low borrowing rate or a low institutional cohort default rate. The information that institutions must report is necessary to calculate not only the D/E rates, but also to calculate the EP

measure and to determine many of the disclosure items as provided in § 668.43(d). Exempting some institutions from the reporting requirements, whether partially or fully, would undermine the effectiveness of both the accountability and transparency frameworks of the regulations because the Department would be unable to assess the outcomes of those programs. In addition, students would not be able to access relevant information about these programs and compare outcomes across institutions. We also note that D/E rates calculations would likely be favorable for institutions with low rates of borrowing.

Changes: None.

Comments: One commenter noted that reporting requirements constitute administrative work that does not serve students in a direct manner. Several commenters noted that the costs of the new reporting requirements will inevitably transfer to the student.

Discussion: We do not agree that the efforts institutions will need to invest in to comply with reporting requirements do not directly serve students. The financial value transparency metrics calculated using the reported data will provide valuable information directly to current and prospective students, who can use that information to better inform critical enrollment and borrowing decisions. Moreover, the GE accountability framework will directly protect students, prospective students, families, and the public by ending title IV, HEA participation for the poorest performing programs.

While we acknowledge that institutions may pass administrative costs on to students through increased tuition and fees, we note that the transparency framework will increase the availability of cost information available to students and prospective students in comparing programs and institutions, and we expect that market forces will mitigate this practice to some extent through increased pricing competitiveness among institutions.

Changes: None.

Specificity

Comments: One commenter argued that proposed § 668.408(a)(4), which would allow the Department to specify additional reporting requirements in a future **Federal Register** notice, is vague and overly broad to such an extent as to provide us with unlimited discretion in imposing additional reporting requirements. This commenter contended that proposed § 668.408(a)(4) did not provide sufficient notice concerning the types of information that institutions may be required to report or

disclose. The commenter requested that the Department either provide further information about the types of reporting that may be required under § 668.408(a)(4) or remove this provision. Another commenter expressed concern that the public would lack a mechanism to engage the Department prior to the addition of any further reporting requirements through a future **Federal Register** notice.

Discussion: We believe that the Department needs the discretion to reasonably modify future reporting requirements to adapt to unforeseen changes in the postsecondary ecosystem, including to eliminate unnecessary or duplicative reporting requirements. Examples of such potential developments that might be relevant to students could include more reliable and consistent job placement rates, new types of financial assistance available to students in addition to the title IV, HEA programs, or other such information. Retaining the flexibility to efficiently modify future reporting requirements is necessary to support our goal to provide the students, families, and the public with relevant information to make better informed postsecondary choices.

We note that any future modifications to reporting requirements in the **Federal Register** would be published well in advance of the effective date of such modified requirements and would provide a contact for questions about the new requirements.

Changes: None.

Timeframe

Comments: One commenter expressed support for the proposed reporting timeline and urged the Department to aggressively prioritize the development of data systems and other related tools. This commenter further noted that such reporting requirements are not new because institutions with GE programs have previously implemented many aspects of the proposed reporting requirements, and we already require all institutions to report many of the proposed data points.

Discussion: We appreciate the commenter's support, and we affirm our intent to prioritize the development of the systems and tools necessary to facilitate the reporting requirements. We agree that the reporting requirements set forth in this final rule are not without precedent, and many of them should already be familiar to institutions.

Changes: None.

Comments: Many commenters noted that the proposed reporting provisions would require institutions to report multiple years of initial data with only

a 30-day window from the effective date of this final rule and urged the Department to allow institutions adequate time to prepare and report any required information, particularly in light of other high-priority work competing for institutions' limited resources. One example provided was implementing sweeping FAFSA simplification changes for the 2024–2025 award year.

A few commenters remarked that efforts necessary to comply with the initial reporting deadline for the 2014 Prior Rule were harmful to other institutional operations that had to be postponed. These commenters suggested revising the initial reporting deadline from July 31, 2024, to October 1, 2024, which would be consistent with the reporting deadline for all subsequent years. Several commenters more broadly suggested that the initial reporting deadline should be a minimum of 90 to 120 days after the later of the effective date of the final rule or the date that the Department makes available the full reporting format and process. These commenters recommended further extensions if we modify or supplement reporting guidance after releasing it.

Discussion: We believe that the July 31, 2024, deadline for initial reporting is reasonable and appropriate. While this reporting period ends one month from the effective date of the final rule, institutions will have over nine months from the publication of the final rule to plan and prepare for the required reporting. With regard to alleged harm to other institutional operations caused by efforts to meet the initial reporting deadline, we note that under the existing administrative capability provisions at § 668.16(b)(2), institutions are required to maintain an adequate number of qualified staff to administer the title IV, HEA programs, and part of an institution's responsibility is to comply with reporting requirements. The Department will provide training in advance to institutions on the new reporting requirements, provide a format for reporting, and enable the Department's relevant systems to accept optional early reporting from institutions beginning several months prior to the July 31, 2024, deadline. We are not persuaded by commenters' arguments that the implementation of changes for the 2024–25 award year under the FAFSA Simplification Act and FUTURE Act would necessitate extending the initial reporting timeline because most institutions will have already made the necessary operational and procedural adjustments much sooner than July 2024. We note that the new FAFSA system and associated

processes will become operational and available to institutions in December 2023.

We respectfully decline the commenters' suggestions to extend the initial reporting period through October 1, 2024, or for an initial reporting deadline 90 to 120 days after the effective date of this final rule. As discussed above, we maintain that institutions have sufficient advance notice between the publication of this final rule and the initial reporting deadline of July 31, 2024, to comply, especially given the anticipated option for advanced reporting. If the Department significantly modifies or supplements the reporting requirements after the effective date of this rule, we will consider further extending the deadline.

Changes: None.

Reporting Period

Comments: Many commenters noted that the requirement to report certain information for students who enrolled in the previous seven award years (and, in some cases, up to nine) would consume significant institutional time and resources. These commenters explained that this would especially burden under-resourced institutions. One such commenter postulated that requiring institutions to report data from prior award years could lead to a widespread exodus of institutional financial aid staff. Some commenters noted that reporting for more than three to five past award years would exceed existing record retention requirements and, as a result, this historical data requested by the Department would be incomplete. Several commenters urged the Department not to impose sanctions for metrics calculated using data from past years that exceed applicable record retention requirements.

Discussion: We believe that the initial reporting requirements are reasonable for most institutions and programs, including under-resourced institutions. Nearly all proprietary institutions are already familiar with the previous reporting requirements under the 2014 Prior Rule, and significant portions of public and private nonprofit institutions were also required to report for one or more GE certificate programs under those previous requirements. We remain skeptical that the initial reporting requirements would lead to significant departures of institutional financial aid professionals, in part because at most institutions, reporting responsibilities falls primarily on specific financial aid staff, and in many cases reporting is handled through automated processing systems or dedicated reporting staff

outside the financial aid office. Furthermore, most of the records institutions must report fall within the record retention timeframe required under § 668.24(e), even if the data are maintained in multiple systems or formats. In addition, institutions may have a policy of retaining student records for longer periods; or a State or accrediting agencies or both may require them to do so.

Nonetheless, we are sensitive to institutions' concerns about the initial reporting burden. To address these concerns, we have extended the transitional reporting period option initially proposed for non-GE programs to GE programs as well, as further discussed under "Transitional Period" below.

Changes: We have revised the transitional reporting option at § 668.408(c)(1) to now apply both to GE and non-GE programs.

Comments: A few commenters noted that the Department would better promote a cooperative and supportive relationship with institutions by including an opportunity for institutions to explain any failure to comply with reporting requirements. Another commenter suggested the Department further explain the provision at proposed § 668.408(b)(2) that would allow an institution to provide an explanation acceptable to the Secretary of why the institution failed to comply with any of the reporting requirements. A few commenters argued that the Department should hold an institution harmless for failing to report data it is no longer required to retain. These commenters suggested that, if a material number of institutions fall into this category, the Department should not calculate D/E or EP metrics for the impacted years.

Discussion: We concur with commenters that a process is necessary for institutions to explain to the Department any failure to comply with reporting requirements. This process would be appropriate, for example, in instances in which a disaster, emergency, or attack results in the loss or destruction of data the institution must otherwise report. We expect to provide additional information regarding the manner and circumstances in which institutions could employ this provision in future sub-regulatory guidance and training. In such instances where institutions are unable to comply with these reporting requirements because the institution was not required to retain the records, § 668.408(b)(2) will allow an institution to explain its inability to comply with part of the reporting requirements. The Department

will review an institution's explanation and may provide relief from the consequences of the rule if sufficiently supported by the circumstances and evidence provided. We believe this approach provides the needed flexibility to accommodate limited circumstances in which institutions may be unable to report, including exceptional circumstances that are difficult or impossible to foresee at this time, without unduly delaying or compromising the transparency and accountability benefits of the rule.

Changes: None.

Comments: One commenter noted that the Department and other regulators encourage institutions to limit the volume of data they store, further noting that our data destruction guidance encourages institutions to minimize the amount of data they retain by destroying them when no longer needed, identifying this as a best practice for protecting individuals' privacy and for limiting the potential impact of a data breach.

Discussion: We do not believe the proposed reporting requirements inherently conflict with the record retention requirements at § 668.24(e), nor with the Department's guidance pertaining to the destruction of records. The record retention provisions at § 668.24(e) were never intended to shield institutions from complying with the Department's legitimate program oversight activities. For example, § 668.24(e)(3) requires institutions to retain applicable program records relating to costs questioned in an audit or program review, indefinitely and beyond the prescribed three-year retention period, until resolution of such audit or program review. In addition, many institutions retain student records for longer periods than required by § 668.24(e), either as a matter of institutional policy or as a result of State or accrediting agency requirements. As noted in the Department's data destruction guidance cited by the commenter, some data may need to be preserved indefinitely, while other student information will need to be preserved for a prescribed period of time to comply with legal or policy requirements.¹⁵⁵ The reporting requirements established under this rule constitute such a requirement that necessitates the retention of relevant records, potentially beyond the three-year periods referenced in § 668.24(e).

Changes: None.

¹⁵⁵ studentprivacy.ed.gov/sites/default/files/resource_document/file/Best%20Practices%20for%20Data%20Destruction%20%282019-3-26%29.pdf.

Comments: One commenter expressed concern that the proposed reporting period may inadvertently identify medical programs as low financial value, lessening their ability to recruit students and exacerbating the Nation's physician workforce shortage, because a program's current metrics would be calculated based on the outcomes of students from nearly a decade ago, long before the institution would know what metrics the Department would eventually consider to constitute good financial value in 2024.

Discussion: Our Regulatory Impact Analysis in the NPRM showed that certain undergraduate health professions programs, particularly certificate programs in medical assisting and medical administration, would fail the GE accountability measures at higher-than-average rates.¹⁵⁶ We do not, however, expect that programs leading to a terminal medical degree will fail the D/E rates or EP measure in significant numbers. We further note that the cohort period defined at § 668.2 for doctoral medical and dental programs that require students to complete a residency provides additional time, relative to other programs, before graduate earnings will be measured. This provides additional reassurance that reported earnings will accurately and positively reflect physicians' and dentists' ability to exceed the high school earnings threshold and capacity to repay their educational debts. In summary, we do not expect that the regulations will deter aspiring physicians and dentists from pursuing their chosen field, and we do not believe that they will substantially negatively impact the Nation's physician workforce.

Changes: None.

Comments: One commenter posited that a more practical and less burdensome reporting process might focus on forward-looking reporting rather than data from past award years, arguing that such an approach would better accommodate institutions' need for time to adapt to new reporting requirements, and that current and future data would be more relevant for evaluating program effectiveness.

Discussion: Although we appreciate the commenter's suggestion, as discussed in the "Background" section of the NPRM,¹⁵⁷ we perceive that the need for these financial value transparency measures and the GE accountability framework is too urgent to justify further delay in calculating and publishing the D/E rates and EP

¹⁵⁶ See, for example, 88 FR 32427.

¹⁵⁷ 88 FR 32300, 32306 (May 19, 2023).

measures. The Department believes that the regulations provide institutions sufficient time and flexibility to adapt to any new reporting requirements, and that historical data can provide helpful insight into an established program's performance over time. Students, families, and the public deserve to benefit from improved transparency and accountability as swiftly as possible.

Changes: None.

Comments: Several commenters noted that some of the required data would be associated with years in which institutions and students were impacted by the COVID-19 national emergency and that this pre-pandemic environment may no longer exist for many students.

One commenter suggested that the Department postpone any sanctions where data prior to 2022 is used in determination of eligibility, due to the broad impact of the COVID-19 pandemic on workers, graduates, and the postsecondary education industry. A commenter suggested extending the initial reporting requirements by one to two years to better account for the economic effects of the pandemic.

Discussion: The Department recognizes that data from some years included in the initial reporting period were impacted by the COVID-19 pandemic and national emergency. However, postponing calculating the outcome measures until such time as no earnings data through 2022 is included in D/E rate or EP calculations would delay the benefits of the rule until at least the 2026–2027 award year. Extending the initial reporting timeframe by one to two years would produce a similar result. As discussed above, we believe the need for the transparency and accountability measures is too urgent to postpone any of their primary components to such an extent, and to do so would abdicate our responsibility to provide effective program oversight.

Additionally, we are unconvinced by arguments that data from prior to 2020 represent a pre-pandemic reality that no longer exists. Recent data show that overall labor force participation is back to its pre-pandemic forecasted level, and the prime-age (25–54) labor force participation rate is now slightly above pre-pandemic levels.¹⁵⁸ We consider and further discuss comments pertaining to the COVID-19 pandemic below under “Other Accommodations and Special Circumstances.”

Changes: None.

Transitional Period

Comments: A few commenters expressed appreciation for the transitional reporting offered at proposed § 668.408(c)(1) for eligible non-GE programs.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: Several commenters requested that we offer GE programs the same reporting options as non-GE programs in the interests of fairness, reduced burden, and consistent comparison among all types of programs. One commenter opined that the proposed transitional reporting period option would unfairly hold GE program to a more difficult standard. This commenter argued that the reporting burden offered by the Department as reasoning for the transitional reporting period for non-GE programs holds equally true for GE programs.

A few commenters requested further explanation of the Department's reasoning for the difference in initial reporting requirements.

A few commenters recommended extending the transitional reporting period option to GE programs that do not offer loans. These commenters noted that many GE programs—particularly at community colleges—do not offer loans, yet we would require them to report seven years of institutional data to facilitate D/E rates that we would ultimately not calculate for those programs.

Discussion: Our reasoning for offering the transitional reporting and rates option only to non-GE programs was to lighten the initial reporting burden for institutions offering only non-GE programs which they were not required to report under the 2014 Prior Rule. Given that the financial value transparency metrics do not impact program eligibility for non-GE programs, we believed that alleviating some of the initial reporting burden would justify a temporary sacrifice in the quality and comparability of the D/E data reported during the transition period.

With regard to concerns about reporting requirements for institutions and programs that do not offer loans, we note that the Department would nonetheless calculate the EP measure for such institutions and programs.

While we maintain that the initial reporting requirements are reasonable, in the interests of more equitable treatment of programs and institutions, and to facilitate smoother and less burdensome implementation for institutions, we extend the transitional

reporting option to all programs in this final rule. We believe that this change will alleviate many commenters' concerns about fairness, cost, and burden, and that these considerations justify the brief period for which the D/E rate data will be impacted.

Changes: We have revised the transitional reporting option at § 668.408(c)(1) to now apply both to GE and non-GE programs.

Comments: One commenter suggested that the Department use only the transitional reporting and calculation methodology, abandoning any requirements to report for periods older than the preceding two award years.

Discussion: The Department considered permanently adopting the transition period's structure of calculating D/E rates for all programs. While this approach would result in a mismatch between borrowing and earnings cohorts, it would use the most recently available debt and earnings data to determine program D/E outcomes. Such an approach would also increase institutions' ability to affect their students' borrowing levels in response to adverse D/E outcomes before losing eligibility. While this approach could make the D/E rates more forward-looking, we decided against it as a permanent measure because the earnings and debt measures would reflect the outcomes of different students. We believe the D/E rates will be more meaningful and informative to most students if completers' earnings outcomes are matched with the debt incurred by the same group of borrowers.

Changes: None.

Comments: One commenter posited that because the 2014 Prior Rule used a different methodology to calculate D/E rates, such as not considering scholarships and grants in capping loan debt, it would be inappropriate to use those earlier data to calculate D/E rates under this final rule.

Discussion: In writing the NPRM, we did not envision using previously reported data to calculate D/E rates. Instead, we will require reporting of new information for past completer cohorts to construct the rates as set forth in the final rule. Since we have extended the transitional reporting option to both GE and non-GE programs, institutions will have the choice to report these additional data elements, such as private loans, institutional scholarships, and grants, starting with the most recent completer cohorts, or for the historical cohorts matching those for whom we measure median earnings.

Changes: None.

¹⁵⁸ www.whitehouse.gov/cea/written-materials/2023/04/17/the-labor-supply-rebound-from-the-pandemic.

Redundancy

Comments: Several commenters urged the Department to avoid imposing duplicative reporting requirements, asserting that institutions already report some data elements at proposed § 668.408 (such as CIP code, credential level, program name, program length, enrollment status, attendance and graduation dates, disbursement amounts, and income once IRS Direct Data Exchange is in place) to other Department-maintained websites such as NSLDS, COD, and Integrated Postsecondary Education Data System (IPEDS). These commenters further suggested that the Department should share data it controls between systems and processes to relieve administrative burden for institutions. A few commenters further noted that duplicative reporting requirements increase institutional burden yet provide little added value to students because much of the information is already available.

Several commenters noted that institutions are already required to publish graduation and placement rates through accrediting agency requirements. A few commenters opined that it is difficult for career training programs to comply with overlapping transparency requirements. These commenters suggested that the Department thoroughly review the annual requirements for reporting, accountability, and transparency.

Discussion: Although there is some overlap with the Department's current enrollment reporting and disbursement reporting requirements, those data do not include several key elements required for the calculation of D/E rates, such as debt students owe directly to the institution, other private education loan debt, tuition and fees, and allowance for books and supplies. As discussed under "Burden" above, we believe that the transparency and accountability benefits outweigh any burden of reporting. We further note that various factors, such as the sophistication of an institution's systems, the size of the institution and the number of programs that it has, whether or not the institution's operations are centralized, and whether the institution can update existing systems to meet the reporting requirements will affect the level of burden for any particular institution.

With regard to accrediting agency requirements concerning the publishing of graduation and placement rates, we remind commenters that we do not include placement rates among the reporting requirements in this rule.

Accrediting agency requirements and methodologies vary, and inconsistencies in how institutions currently calculate job placement rates limit their usefulness in comparing institutions and programs.

As previously noted, the Department has carefully considered the reporting requirements that support the transparency and accountability frameworks of this rule. We believe them to provide the most appropriate and helpful information for students, families, and the public at this time balanced with the needs of institutions. The Department will nonetheless review the data institutions currently report and will work to mitigate duplicative reporting to the greatest extent possible.

Changes: None.

Data Elements

Comments: One commenter suggested that, in addition to the data elements identified in the NPRM, the Department require institutions to report the distance education status of their students (*i.e.*, entirely online, entirely on-campus, or hybrid). This commenter reasoned that doing so would enable useful insights about the outcomes of online and hybrid programs and would allow a more targeted comparison of earnings between completers and high school graduates for the EP measure.

Discussion: We appreciate this suggestion, and we concur that more granular data on students' distance education status could yield useful and better targeted program information. We do not currently gather this information on the individual student level. We considered strategies for obtaining such information, such as creating and assigning virtual OPEID numbers to represent an institution's online-only programs. Upon further consideration, we believe that such changes could have wider ranging impacts and would be best addressed by including them in a broader discussion of distance education issues in our upcoming negotiated rulemaking.¹⁵⁹

Changes: None.

Comments: One commenter suggested removing reporting requirements for non-Federal sources of aid, particularly private loans and institutional grants, noting that institutions are only aware of private loans if lenders or students disclose them. The commenter further noted that gathering and reporting private loan information is burdensome for institutions.

One commenter proposed removing the requirement to report institutional debt. This commenter argued that the

institutions collect these debts directly from the student, they are not tied to Federal investment, and they typically result from student withdrawals. As an alternative, this commenter suggested using return of title IV, HEA funds (R2T4) record submission to estimate the average institutional debt.

Another commenter noted that reporting debt due at time of exit from the program presents unique programming challenges that would require manually fixing a significant portion of records, suggesting that institutions be exempted from reporting this data element if the median value is less than \$200.

Discussion: The reporting of non-Federal sources of aid—including institutional grants and scholarships; State, Tribal, or private funding; and the private education loans of which the institution is aware (including those made by an institution) is necessary to accurately determine educational debt for purposes of calculating and providing D/E rates. Omitting private education loan debt, including institutional loan debt, would harmfully diminish the usefulness of the information by providing an inaccurate estimate of the true costs typically incurred by students to enroll in a program. Regardless of any associated burden, reporting non-Federal grants and scholarships ultimately benefits institutions because, as provided under § 668.403, in determining a program's median loan amount each student's loan debt would be capped at the lesser of the loan debt or the program costs, less any institutional grants and scholarships. Some institutions with higher overall tuition costs offer significant institutional financial assistance or discounts that reduce the net cost for students to enroll in their programs. Requiring institutions to report institutional grants and scholarships allows the Department to take such financial assistance into consideration when measuring debt outcomes, will encourage institutions to provide financial assistance to students, and will ultimately result in a fairer metric and more consistent comparisons of the actual debt burdens associated with different programs.

While we appreciate the suggestion to use R2T4 reporting as a proxy to estimate institutional debt, doing so would overlook other sources of institutional debt such as gap loans, emergency loans, and payment plans. We believe it is necessary to capture all such sources of educational debt to calculate and provide D/E rates that are sufficiently accurate.

¹⁵⁹ See 88 FR 17777 (Mar. 24, 2023).

We also appreciate the commenter's suggestion that institutions be exempted from reporting institutional debt if the median value is less than \$200. While we recognize the technical concerns, we believe that this burden is outweighed by the benefit of accurate debt information. While \$200 may appear to be a reasonable *de minimus* amount of debt for institutions not to report, it is unclear what data would support this threshold or some other particular amount. Additionally, we do not believe a threshold to be appropriate, because to many current and prospective students even a modest amount could make the difference in covering critical indirect costs such as housing, food, or transportation, or going forward with those needs unfulfilled.

Changes: None.

Comments: Regarding the requirement to report licensure information (including whether the program meets licensure requirements for all States in the institution's area and the number of graduates attempting and completing licensure exams), one commenter noted that licensure requirements and oversight bodies vary by State and suggested that the Department investigate other, more accurate sources of licensing, certification, and workforce data, such as BLS Occupation and Wage Statistics or Employment Projections data.

One commenter opined that reporting State-specific licensure preparation requirements exceeds the limits of what institutions can reasonably accomplish.

One commenter noted that the Florida Education & Training Place Information Program does not disaggregate wage and employment data for private nonprofit institutions, further noting that student and employer surveys are unreliable and suffer from poor response rates.

One commenter posited that reporting program costs including books, supplies, and equipment would be burdensome for community colleges because those elements can frequently change. This commenter instead suggested that we require institutions to report a good-faith estimate.

Discussion: We are aware that licensure oversight bodies, processes, and requirements vary from State to State, and we acknowledge that institutions must commit sufficient time and resources to adequately navigate those requirements. Notwithstanding the complexities of the State licensing landscape, we remind commenters that accurate information about whether a program meets State licensure requirements is of paramount importance to students. Reporting whether a program meets relevant

licensure requirements for the States in the institution's metropolitan statistical area or whether it prepares students to sit for a licensure examination in a particular occupation allows the Department to provide current and prospective students with invaluable information about the career outcomes for graduates of the program and supports informed enrollment decisions. In recent years, some institutions have misrepresented the career and employment outcomes of programs, including the eligibility of program graduates to sit for licensure examinations, resulting in borrower defense claims. Reporting information about a program's licensure outcomes—such as share of recent program graduates that sit for and pass licensure exams will help to reduce the number of future borrower defense claims that are approved.

With regard to the request to consider BLS data, we do not believe that BLS data reflect program-level student outcomes. The average or percentile earnings gathered and reported by BLS for an occupation include all earnings gathered by BLS in its survey, but do not show the specific earnings of the individuals who completed a particular program at an institution and, therefore, would not provide useful information about whether the program prepared students for gainful employment in that occupation.

With regard to concern about the disaggregated Florida earnings data, we note that institutions do not report wage and employment data under this rule. A Federal agency with earnings data provides aggregate earnings data directly to the Department.

We believe that institutions are capable of collecting and reporting State licensure information, and the importance of State licensure information to students justifies any burden to institutions in collecting and reporting such data. We do not believe that allowing institutions to report a good-faith estimate would result in accurate and comparable information, in part because whether an estimate was provided in good faith would be subjective and difficult if not impossible to define.

Changes: None.

Comments: One commenter suggested that the Department require institutions to report additional data elements, including (1) whether a program graduates commonly are subject to a postgraduate training period, similar to a medical or dental program internship or residency, that could impact their early career postgraduate earnings; (2) the amount of title IV, HEA funds

obtained by the student for housing; and (3) whether graduates obtain employment that is unpaid or subsidized through a government program with housing, meal, or other non-income benefits.

Discussion: We appreciate the commenter's suggestions. With regard to postgraduate training requirements that could impact immediate postgraduate earnings, we include this information among requirements that institutions must report to the Department, and include it on the list of elements the Secretary may include on the program information website described in § 668.43. Our analysis, however, revealed that those particular disciplines demonstrate significantly more meaningful gains with an extended earnings measurement period than any other program categories. As further explained in our earlier discussion under "Measurement of Earnings," we determined that reporting postgraduate internship or residency requirements is properly targeted to medical and dental programs, as initially proposed.

We believe it is more appropriate for institutions to report the annual allowance for housing, rather than the amount of title IV, HEA funds a student obtained specifically for housing. Not all institutions offer institutional housing, nor do all students partake of institutional housings at institutions that offer it. It would be both burdensome and unreliable to require institutions to divine which specific educationally related indirect costs each student covers using title IV, HEA credit balances.

While we recognize that some students obtain employment that is unpaid or subsidized through a government program with housing, meal, or other non-income benefits, we believe this would apply to only a small portion of postsecondary graduates. While unpaid or subsidized programs may provide meaningful personal fulfillment and valuable societal benefits, financial concerns weigh more heavily in most students' decision to go to college, with the top three reasons identified being "to improve my employment opportunities," "to make more money," and "to get a good job."¹⁶⁰ We believe it would be unnecessarily burdensome to require institutions to report this supplementary information, and that such burden

¹⁶⁰ Rachel Fishman (2015). 2015 College Decisions Survey: Part I Deciding To Go To College. New America (static.newamerica.org/attachments/3248-deciding-to-go-to-college/CollegeDecisionsPartI.148dcab30a0e414ea2a52f0d8fb04e7b.pdf).

would outweigh the benefits to students.

Changes: None.

Alternative Approaches

Comments: One commenter urged the Department to consider alternative approaches to increase transparency without increasing costs to institutions.

Discussion: The Department is always interested in exploring new approaches to deliver improved outcomes while minimizing costs and burden.

Nonetheless, among the options available at this time, we believe the approach set forth in this rule will provide the optimal achievable balance between costs and benefits. Further discussion is provided under “Discussion of Costs and Benefits” below.

Changes: None.

Other

Comments: One commenter opined that the Department did not discuss the collection of such a large amount of data and information during negotiated rulemaking sessions.

Discussion: The Department disagrees with the commenter’s assertion that the reporting requirements were not discussed during negotiated rulemaking. Preliminary language in the GE issue papers for weeks two¹⁶¹ and three¹⁶² of negotiations provided potential reporting requirements for consideration and discussion by the committee. Because the committee did not reach consensus, the Department is neither limited nor bound to the specific regulatory language discussed in negotiated rulemaking. Moreover, the reporting requirements were published in the NPRM, and the Department provided the public—including the negotiators—a reasonable opportunity to provide feedback to the Department through the public comment period.

Changes: None.

Program Information Website—§ 668.43

General Support

Comments: Several commenters voiced general support for the proposed program information website and requirements, noting that programmatic information should be more publicly available to support students in making informed decisions.

The commenters further noted that this information may help to prevent harm to vulnerable populations. Additionally, these commenters

suggested that this information can encourage schools to operate more efficiently and devote more resources to providing career services and job development resources to students. The commenters further highlighted that the program information website provides other State, local, and Federal stakeholders with information to monitor and guide the improvement of student outcomes.

One commenter noted that borrowers with defaulted loans interviewed in focus groups expressed a desire for more information about loans and college outcomes.

One commenter observed that financial value transparency information relating to cost of attendance, majors of interest, residence, and post-graduation earnings can impact a student’s enrollment decisions.

Discussion: We thank the commenters for their support.

Changes: None.

General Opposition

Comments: One commenter opined that institutions, not the government, are best positioned to advise and inform students and families.

Discussion: We remind the commenter that nothing in this rule prohibits an institution from providing information to students and families. We of course welcome and encourage institutions to provide any reliable supplemental and contextual information to students that they may wish to provide in addition to the information we make available through the program information website. We believe, however, that both institutions and the government have important roles to play in this regard. We believe that relying solely on institutional efforts and resources would result in inconsistent information that would make comparing different institutions and programs more challenging and confusing for students, would increase the risk of misrepresentation and abuse leading to costly borrower defense claims, and would unfairly disadvantage smaller and under-resourced institutions without large marketing departments and budgets. The financial value transparency information we have chosen provides more consistent information to students and the public, more equitable treatment of institutions and programs, and better serves the needs of the public and the mission of the Department.

Changes: None.

Comments: Several commenters questioned how many students would carefully view the proposed program

information website, opining that excessive consumer information risks obscuring the information and overwhelming students.

Another commenter cited the Department’s Direct Loan entrance counseling as an example of consumer information transparency where the organization, length, and language impede students’ interest and understanding of the information, leading students to only skim the material to meet the requirement to enable disbursement of pending loan funds.

Discussion: The purpose of Direct Loan entrance counseling and the financial value transparency information materially differ. Entrance counseling is intended to make borrowers aware of their rights, responsibilities, and resources available to them. The financial value transparency information provides information about the debt and earnings outcomes of a program intended to aid students in making informed enrollment decisions. We believe that all of the required information would be useful and relevant to prospective and enrolled students. We, however, concur with the commenters that it is critical to provide prospective and enrolled students with the information that they would find most helpful in evaluating a program when determining whether to enroll or to continue in the program. We note that § 668.43(d)(1) allows us to use consumer testing to identify additional information that will be most meaningful for students, and § 668.408(a)(4) permits us to modify future reporting requirements as necessary to support improved transparency.

Changes: None.

Comments: One commenter opined that the requirements in proposed § 668.43(d)(1)(ii), (v), (vi), (vii), (x), and (xi) to report a program’s completion and withdrawal rates, D/E rates, EP measure, loan repayment rates, median loan debt, and median earnings would violate institutions’ constitutional rights under the First Amendment. The commenter argued it is not clear that the information required to be reported would be purely factual and uncontroversial because institutions would not have an opportunity to review, challenge, or appeal the Department’s data or calculations before the information is made public. This commenter further posited that the proposed requirements do not advance a significant government interest in preventing deceptive advertising and providing consumer information about program benefits and outcomes because

¹⁶¹ www2.ed.gov/policy/highered/reg/hearulemaking/2021/3ge.pdf.

¹⁶² www2.ed.gov/policy/highered/reg/hearulemaking/2021/isspap3gainempl.pdf.

the information is made public before institutions have an opportunity to review, challenge, or appeal the information. As a result, according to the commenter, the Department could inadvertently provide deceptive or confusing information. This commenter additionally noted that, in response to similar objections under the 2014 Prior Rule, the Department cited that the disclosures in that rule were purely factual and uncontroversial in part because institutions were given an opportunity to challenge the data and calculations, which is absent in the proposed regulations.

Discussion: The Department disagrees that the requirements related to the program information website violate institutions' First Amendment rights to the freedom of speech. As an initial matter, the rules do not require institutions to disclose the information in § 668.43(d)(1) to students because that information will be posted on the Department's website, not the website of an institution or program. In order to clarify the nature of the reporting requirements in § 668.43(d), we are replacing references to the Department's "disclosure" website with "program information" website and making related conforming changes to better clarify the distinction between this website hosted by the Department and the institutional disclosure requirements in § 668.43(a) through (c). Section 668.43(d)(1) does not require institutions to make disclosures to students, as the 2014 Prior Rule did, and we are changing the terminology to avoid any confusion about the nature of these requirements.¹⁶³

Additionally, the rules aim to protect the use of taxpayer funds and facilitate program innovation, not only to enhance informed student choice and public information more generally. To the extent some commenters suggest the rules will require institutions or programs to include such information on their own websites, they are incorrect. To clarify, the Department will collect information and data from institutions and other sources, conduct certain calculations in accordance with the rules, and post results on the Department's website. The material posted on the Department's website will be the government's speech, and clearly so, not any institution or program's

speech,¹⁶⁴ and will impose no burden on the content choices of institutions. To the extent that commenters suggest that private parties have free speech rights to control the content of an agency website under these circumstances, or that institutions have a free speech right to regulate communications between the Department and students receiving Federal aid, the Department disagrees with the conclusion. That view of the First Amendment would implicate a broad range of government communications that rely in part on information collections from private parties.

Moreover, the information available on the Department's program information website will consist of accurate factual, uncontroversial information regarding an institution's programs. Courts have upheld the provision of factual information against First Amendment challenge even when, unlike the situation here, the government has required disclosures to be made by private parties.¹⁶⁵ Indeed, a district court rejected First Amendment and other challenges to a disclosure provision in the 2014 Prior Rule, which required institutions to make disclosures directly to prospective and enrolled students.¹⁶⁶ We point out that,

¹⁶⁴ See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015) ("When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.").

¹⁶⁵ See, e.g., *Recht v. Morrissey*, 32 F.4th 398, 419 (4th Cir.) (involving required insertions into attorney advertisements regarding certain drugs and their approval by the Food and Drug Administration), cert. denied, 143 S. Ct. 527 (2022); *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 540 (D.C. Cir. 2020) (involving required disclosures of hospital pricing information to reduce confusion); *CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 849 (9th Cir. 2019) (involving required retail information regarding cellular phone carriage and Federal Communications Commission standards); *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, 414–15 (D.C. Cir. 2012) (involving the required prominent display of total prices on airline websites); *Am. Meat Inst. v. U.S. Dep't of Agric.*, 76 F.3d 18, 26–27 (D.C. Cir. 2014) (involving required country-of-origin labeling); *New York State Restaurant Ass'n v. New York City Bd. of Health*, 556 F.3d 114, 131 (2d Cir. 2009) (regarding required disclosure of calorie information in connection with the sale of restaurant meals). This list is not intended to be an exhaustive collection of relevant sources, but instead an instructive list of court decisions that upheld regulations even when government subsidies were not at issue. For a readily distinguishable case that found a constitutional violation, see *Nat'l Inst. of Family & Life Associates v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (regarding crisis pregnancy centers). Note further that, below, we address the freedom of speech and warnings about GE programs.

¹⁶⁶ See *Ass'n of Priv. Sector Colleges & Universities v. Duncan*, 110 F. Supp. 3d 176, 198–200 (D.D.C. 2015) (alternative holdings) (involving required disclosures including total costs or

in this final rule, § 668.43(d)(2) through (4) merely require schools to inform students of and direct them to the Department's program information website, which will contain purely factual, uncontroversial information. Such website links and access information are not the kind of "compelled speech" that has raised serious concerns in the past.¹⁶⁷

As for the rules adopted here regarding the Department's program information website and the institutional reporting of information on which it will be based, we believe the rules will directly advance important government interests in informed student choice and protection of tax-financed resources, as well as innovation in educational programs, by making comparable information on program features and results readily available.¹⁶⁸ Moreover, the rules are crafted to serve the Department's goals and do not impose burdens on the speech rights of institutions. The final rules will make available objective, factual, uncontroversial, and commonsense information about programs and their track records. Those outcomes include clearly defined measures of affordable debt and adequate earnings.¹⁶⁹ As we discuss elsewhere in this document, institutions may correct errors in certain calculations.

Furthermore, the rules will not interfere with institutions' ability to convey their own messages about program performance and much else. Students and others will be free to evaluate the content of the Department's website as they make educational decisions. And we emphasize that the rules apply only to institutions that

estimated costs of completing a program), *aff'd*, 640 F. App'x 5, 6 (D.C. Cir. 2016) (noting that, on appeal, the Association no longer challenged the disclosure rules).

¹⁶⁷ See *Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 61–62 (2006) (distinguishing government-mandated pledges and mottos from a requirement that law schools include notices regarding recruitment on behalf of the U.S. Military when the schools offer such assistance to other recruiters).

¹⁶⁸ See *Zauderer v. Office of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985) (testing advertiser disclosure requirements for a reasonable relationship to a governmental interest in preventing deception, and for whether the requirements are unduly burdensome to speech); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 259–53 (2010) (following *Zauderer*); *Am. Hosp. Ass'n*, 983 F.3d at 540–42 (same).

¹⁶⁹ Contrast the dictum in *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 154 n.7 (D.D.C. 2012), which expressed concern about a "statement that every student in a program 'should expect to have difficulty repaying his or her student loans.' " The requirements related to the program information website adopted here do not require any such message.

¹⁶³ Section 668.43(d)(2) through (4) (regarding links to the Department's program information website) is addressed below in this section, as well as in a separate discussion that covers public comments on that section that are not directly related to the freedom of speech under the First Amendment.

participate in title IV, HEA programs. Only institutions seeking to gain or maintain title IV, HEA eligibility will have to report the information at issue.

Therefore, the program information website directly advances compelling government interests—preventing deceptive advertising about postsecondary programs, providing consumers information about an institution's educational benefits and the outcomes of its programs, protecting taxpayer interests in the careful use of title IV, HEA funds, and improving program performance, which often comes from better and more accessible information about results. Furthermore, as we noted in the preamble to the 2014 Prior Rule, the program information website builds on significant Federal interests in consumer information that are evidenced in decades of statutory disclosure requirements for institutions that receive title IV, HEA program funds.¹⁷⁰ Contrary to the commenter's opinion, the information provided under § 668.43(d) is purely factual and will not be controversial, in part because the underlying information is either directly reported to the Department by the institution or, in the case of earnings data, is the highest quality data available and provided directly to the Department by a Federal agency with earnings data. As for concerns related to institutional data challenges, we address them below under "Challenges, Hearings, and Appeals."

The Department is confident in the quality of information to be presented on the Department's program information website, and confident that it will significantly improve what is easily available today. The individual items of information listed in § 668.43—including completion and withdrawal rates, D/E rates, EP measure, loan repayment rates, median loan debt, and median earnings—have been narrowly tailored to provide students and prospective students with the information the Department considers most critical in their educational decision making and in protecting taxpayer interests in the use of title IV, HEA aid, and in promoting improvement in education programs. Moreover, the Department intends to use consumer testing to further inform its determination of any additional items it will include on the program information website. We expect that this consumer testing will highlight the information that students find particularly critical in helping them make informed choices, which will in

turn help the Department protect tax-financed resources.

Changes: We have revised § 668.43 to refer to the Department's website as the "program information website" rather than the "disclosure website." We have also made conforming revisions to § 668.605(c)(2) and (3) by changing the reference from "disclosure website" to "program information website."

Mechanism for Providing Transparency

Comments: Several commenters generally supported the proposed requirements but suggested that the Department provide the information via a single centralized website such as the College Scorecard rather than develop a separate website for the proposed metrics. These commenters noted that the College Scorecard is an established and well-known comparison tool and that adding the financial value transparency information to it would give students and families a better-rounded assessment of program value.

One commenter argued that developing a separate program information website would be duplicative, confusing to students, and increase costs to taxpayers when the College Scorecard is already available.

Discussion: We agree that the College Scorecard is a well-established and beneficial tool for providing information about postsecondary outcomes. The Department, however, also recognizes that merely posting the information on the College Scorecard website has had a limited impact on student choice. For example, a randomized controlled trial¹⁷¹ inviting high school students to examine program-level data on costs and earnings outcomes had little effect on students' college choices, possibly due to the fact that few students accessed the information outside of school-led sessions. Similarly, one study¹⁷² found the College Scorecard influenced the college search behavior of some higher income students but had little effect on lower income students.

Consumer information is most likely to impact choice when tailored to the applicant's personal context. We seek to improve the information available to students with several refinements relative to information available on the

College Scorecard, including debt measures that are inclusive of private education loans and other institutional loans (including income sharing agreements or tuition payment plans), as well as measures of institutional, State, and private grant aid. This information will enable the calculation of both the net price to students as well as total amounts paid from all sources. We believe these improvements will better capture the program's costs to students, families, and taxpayers, and we maintain that these benefits sufficiently outweigh the costs of developing the new program information website.

Changes: None.

Comments: One commenter encouraged the Department to consider whether requiring institutions to provide disclosures directly to students could be more efficient than creating a new website.

Another commenter requested that the Department consider a disclosure template similar to the GE disclosure template featured in the 2014 Prior Rule, noting that it would provide clear, concise, and uniform information from institutions to students.

Discussion: We believe that providing financial value transparency information through a centralized website maintained by the Department will make this information more convenient because it allows students, families, institutions, and the public to more easily compare programs than direct institutional disclosure would allow. In addition, requiring institutions to complete and post disclosure templates, or to directly distribute the information to students, would be more burdensome and costly to institutions than the Department's hosting the program information website. We of course welcome and encourage institutions to provide any reliable supplemental and contextual information to students that they may wish to provide in addition to the information we make available through the program information website.

Changes: None.

Comments: One commenter expressed support for a comprehensive postsecondary education data system which would provide academic, debt, and earnings information beyond the institutional or programmatic level down to the individual student level, and which would follow individual students across institutions, ultimately providing more complete and accurate post-graduation debt and earnings information. This commenter expressed support for the system proposed in this rule as a workaround, given that the Department is currently prohibited from

¹⁷¹ Blagg, Kristin, Matthew M. Chingos, Claire Graves, and Anna Nicotera. "Rethinking consumer information in higher education." (2017) Urban Institute, Washington DC. www.urban.org/research/publication/rethinking-consumer-information-higher-education.

¹⁷² Hurwitz, Michael, and Jonathan Smith. "Student responsiveness to earnings data in the College Scorecard." *Economic Inquiry* 56, no. 2 (2018): 1220–1243. Also, Huntington-Klein 2017. nickchk.com/Huntington-Klein_2017_The_Search.pdf.

¹⁷⁰ 79 FR 64890, 64967 (Oct. 31, 2014).

establishing a unit record system of this nature, and noted that in the absence of such a system the approach proposed in this rule represents a generally positive workaround.

Discussion: We appreciate the commenter's support. While HEA section 134¹⁷³ prohibits the creation of new student unit record databases, any earnings data provided to the Department by the Federal agency with earnings data will be at the aggregate level. In the absence of such a granular system of records, we believe the transparency and accountability frameworks will provide program-level information that will exceed the quality and utility of currently existing information and oversight mechanisms.

Changes: None.

Comments: One commenter urged the Department to conduct user testing on its program information website before it launches.

Discussion: We appreciate the commenter's suggestion. The Department recognizes the value of consumer testing, and to this end we deliberately affirm in § 668.43(d)(1) the Secretary's authority to conduct consumer testing to inform the design of the program information website, if we determine that such input would likely enhance the implementation of the transparency framework.

Changes: None.

Scope

Comments: A few commenters expressed support for applying financial value transparency to both GE and non-GE programs to increase access to meaningful information about program performance. The commenters believed this approach addresses concerns about the growing presence at public and nonprofit institution of certain predatory and wasteful practices more prevalent in the proprietary sector, such as incentive-based compensation for online program managers and aggressive marketing of costly online graduate programs. Another commenter expressed support for requiring the calculation of meaningful metrics and providing this information to all students in all eligible programs. One commenter noted that this information is especially important for graduate programs.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: A few commenters opined that any substantive language on the Department's program information website describing whether a program

has met the standards and its presentation should be consistent for both GE and non-GE programs. However, these commenters acknowledged that language regarding potential loss of title IV, HEA program eligibility would not be relevant to non-GE programs.

Discussion: The commenter correctly noted that any language relating directly or indirectly to the loss of title IV, HEA program eligibility must be limited to GE programs, as non-GE programs are not included in the GE program eligibility framework. In crafting any other language, we will attempt to deliver relevant content using language that best serves the needs of students, and we will consider the commenter's suggestion as we develop that content.

Changes: None.

Comments: One commenter argued that the requirements proposed at § 668.43(d)(1)(vii) to provide loan repayment rates for students or graduates who entered repayment, at § 668.43(d)(1)(x) to provide median loan debt of students who completed or withdrew from the program, and at § 668.43(d)(1)(xi) to provide median earnings of students who completed or withdrew from the program are inappropriate. This commenter noted that information would capture students who did not complete the program, further claiming that loan repayment rates, median loan debt, and median earnings for students who did not complete a program are unrelated to the quality of the program.

Several additional commenters opined that the information should not include median loan debt and median earnings for non-completers because it would have no bearing on the expected earnings of a student who completes the program.

Discussion: While the D/E rates and EP measure are specific to graduates of a program, the Department disagrees with the commenters' assertion that other information such as loan repayment rates, median loan debt, and median earnings for non-completers is unrelated to the quality of a program. Graduation is, unfortunately, not the only possible outcome of even the most effective and well-administered postsecondary programs. We believe that students and prospective students have a legitimate interest in knowing the median amount students borrow when enrolling in a given program and their likelihood of being able to repay that debt—whether or not those students ultimately graduate from the program. We contend that such information will assist students in

making better informed enrollment and borrowing decisions.

We further note that the outcomes of students who do not complete a program nonetheless reflect, at least to some extent, upon the quality of the program. It can be reasonably inferred that the capability of an institution to recruit students likely to succeed, to support and retain those students once enrolled, and to provide outreach and support (such as career services and information about loan repayment) to students who withdraw is indeed related to the overall quality of the program.

Changes: None.

Content

Comments: One commenter noted that proposed § 668.43(d)(1) provides that the program information website may include certain items, but does not actually require any of the listed items to appear on the new program information website. The commenter further noted that courts have held that such language would not require the Department to include any of the listed items. This commenter speculated that a future Secretary could effectively rescind the financial value transparency requirements without rulemaking. The commenter added that by providing students a regulatory right to specific information (beyond a right to a website, without any particular content) the Department would clarify that, should it later opt to remove the information, students would suffer an Article III injury-in-fact sufficient to confer legal standing.

Discussion: We share this commenter's concerns and appreciate the suggestion. We concur that proposed § 668.43(d)(1) would have established access to a Department website without guaranteeing access to any specific information. Upon further consideration, we have concluded that some of the listed items of information constitute a minimum of financial value transparency information that should be available to students, and that to remove any of those elements would harm students in the sense of receiving less than that minimum of important and useful information. We have reviewed the list of items in proposed § 668.43(d)(1) as well as data that we can foresee being available to the Department when these rules are implemented, in order to identify information that is feasible and especially important to post. Based on that review we have concluded that, to adequately safeguard students' access to the financial value transparency information otherwise provided under

¹⁷³ 20 U.S.C. 1015c.

this rule, proposed § 668.43(d)(1) should be revised to require the Secretary to include certain listed items of information on the Department's program information website when applicable, while retaining the flexibility to add additional items. In our judgment and based on available evidence, the required list of items represents core program features and matters of special importance to students, institutions, and others who are interested in evaluating and comparing postsecondary education programs. These elements are all key pieces of information that are likely relevant to all students to understand basic facts about how much the program costs, how long it takes to complete, the amounts students borrow, their typical earnings after graduating, and the D/E and EP measures for the program. The elements we mention as optional may have more or less relevance to some students and to some programs than others.

Changes: We have revised § 668.43(d)(1)(i) to require the Secretary to include certain items of information on the Department's program information website when applicable, including the published length of the program; the program total enrollment during the most recently completed award year; the total cost of tuition, fees, books, supplies, and equipment that a student would incur for completing within the published length of the program; the percentage of students who received a Direct Loan, a private loan, or both for enrollment in the program; the programs median loan debt and median earnings; whether the program is programmatically accredited and the name of the accrediting agency; the program's debt-to-earnings rates; and the program's earnings premium measure. The Department reserves the flexibility to add additional items, and retains the proposed data items at § 668.43(d)(1)(ii) as examples of such supplemental data items.

Comments: One commenter suggested revising the list of information items in § 668.43(d)(1) to remove redundant information. This commenter opined that a regulatory requirement for linking to the College Navigator is unnecessary because the College Navigator is not user-friendly for a typical student. The commenter also noted that we could choose to include a link if warranted, since the new program information website would be under the Department's control.

Discussion: We appreciate the commenter's suggestion, and we agree that the Department could include a link to the College Navigator website

without specifying it in the list of elements at § 668.43(d)(1).

Changes: We have removed the link to the College Navigator website from the list of required information items at § 668.43(d)(1).

Comments: Several commenters recommended that the Department provide generalized program level on-time graduation rates, as well as program level on-time graduation rates for Pell-eligible students and for women and for Black, Hispanic, and other students of color.

Discussion: The Department thanks the commenters for these suggestions. We recognize that this information could be useful to students and others, and we may consider adding it to the program information website in the future, particularly if such a change is supported by consumer testing.

Changes: None.

Comments: A few commenters suggested that the program information website should identify institutions that serve a high proportion of low-income students. These commenters argued that a nonprofit institution enrolling 5 percent Pell-eligible students and graduating 95 percent of students does less to improve social mobility than a proprietary institution enrolling 80 percent Pell-eligible students and graduating 60 percent of students.

Discussion: We appreciate the commenters' suggestion, and we might consider adding to the program information website in the future some designation of institutional mission or of programs that serve a high proportion of students with low income. We note, however, that the supporting argument made by these commenters is speculative and appears to understate the emphasis different institutions across all sectors and credential levels in higher education give to diversity in their students and the demographics they serve.

Changes: None.

Comments: One commenter identified loan repayment rates as important information for students, particularly those in GE programs.

Discussion: We agree that a program's loan repayment rate may be important information for students and other stakeholders, and this information is included in the list of information items under § 668.43(d)(1).

Changes: None.

Comments: A few commenters expressed concern that D/E rate information and the high debt burden and low earnings labels could confuse or mislead students, particularly first-generation and disadvantaged students, and could negatively impact

underfunded and under-resourced institutions in regions experiencing persistent poverty. A few commenters opined that labeling programs as high debt burden or low earnings would discourage students from pursuing majors, such as teaching, which suffer from low wages and staffing shortages.

Discussion: We do not agree that the high-debt-burden or low-earnings label on the program information website will be confusing or misleading to students. These designations stem from a program's D/E rate or EP measure outcomes, which in turn rely upon factual data provided by institutions themselves and by Federal agencies with the best available data. Additionally, the meaning of the designations comports with a plain reading of each respective phrase.

The Department disagrees with the commenters' assertion that labeling programs as high debt burden or low earnings would discourage students from pursuing fields such as teaching. While we expect that the high-debt-burden and low-earnings labels will discourage enrollment in particular programs at particular institutions that lead to poor outcomes, we do not expect the financial value transparency framework to discourage enrollment more broadly in those fields of study. With regard to the field of education cited by commenters as an area of concern, as further discussed under "Impact on Enrollment in Lower Earning Fields" above, our analysis reveals that education training programs are less likely to fail the D/E rates or EP measure than other programs. Although a career in education may be less lucrative than other professions within the same credential level, evidence suggests that programs that prepare graduates for a career in teaching easily pass the EP threshold for earnings, and even States with lower salaries have average starting salaries well above the State's EP threshold.

As discussed under "Geographic Variation in Earnings" above, our analysis suggests that being located in persistent poverty counties is not outcome determinative for students at such institutions.

Changes: None.

Comments: Several commenters recommended that information about low-earning programs should also include information about Public Service Loan Forgiveness, as well as other loan forgiveness programs available through the Department of Health and Human Services and the Department of Veteran Affairs, so students can make better informed enrollment and career decisions. One

commenter added that information about Public Service Loan Forgiveness and other relevant assistance programs would particularly benefit those entering the education profession.

One commenter posited that the Department should provide disclaimers and supplemental information where appropriate, such as a disclaimer if a program is disproportionately affected by unreported income. One additional commenter recommended including a disclaimer addressing programs with small cohort sizes.

Discussion: We appreciate the commenters' suggestions and concur that much of this information would be useful to students. We, however, also note that other commenters expressed concerns that the anticipated list of information items could confuse or overwhelm students. These conflicting perspectives demonstrate that we must seek an optimal balance of providing information of the most benefit to students without unduly distracting from the most salient information. We will carefully consider what supplemental information to convey on the program information website, taking into account consumer testing. We note that the list of required disclosure information items at § 668.43(d)(1) does not preclude the Department from adding additional information in the future. We further note that nothing would prohibit institutions from providing supplemental information directly to their students. Lastly, the final rule excludes programs with fewer than 30 completers in substantially similar programs over the previous four award years from reporting requirements of the rule, and therefore their D/E rates and the EP measure will not be available to publish.

Changes: We have revised § 668.408(a) to limit the reporting requirements to institutions offering any program with at least 30 total completers during the four most recently completed award years.

Comments: One commenter suggested that students and taxpayers would benefit from information about completion and placement rates; the existence of academic and related supports; and transfer and persistence rates.

Another commenter asserted that information such as licensure passage rates and residency placement rates are necessary to guard against deceptive recruitment tactics.

One commenter expressed support for providing the typical employment outcomes for a program.

Another commenter opined that the Department should not only require job

placement rates to be provided, but also regulate how such placement rates are calculated, citing the collapse of Corinthian as one example of why providing consistently calculated placement rates is essential to protect students and the public. This commenter contended that in the 2014 Prior Rule preamble, the Department cited a 2011 technical review panel, which concluded a uniform job placement methodology could not be developed without further study because of data limitations. The commenter noted that the NPRM preceding this final rule did not mention this study or discuss whether it should be updated in light of any advances in the available data systems since 2011. The commenter further questioned why the Department's policies requiring placement rates for certain short-term programs under § 668.8(g) could not be applied for purposes of financial value transparency.

Discussion: We agree that students will benefit from knowing completion rates and note that the program's or institution's completion rates are included among the list of information items at § 668.43(d)(1).

Though we agree that licensure passage and residency placement rates would be useful to students, a substantial portion of postsecondary programs do not prepare students to enter a field requiring licensure, and many programs do not entail any residency requirements. In the interest of focusing on the most relevant, comparable, and broadly applicable information, we do not anticipate including licensure passage and residency placement rates on the program information website at this time. We note that the list of information items at § 668.43(d)(1) is not all-inclusive and the Department could add these additional items in the future, particularly if consumer testing supports doing so.

We note that providing the "typical employment outcomes" for a program could mean a variety of things depending upon the audience—for example, the number of graduates who find employment in a specific field, the number of graduates who find employment in any field, the number of graduates who remain employed for a specific length of time, the job satisfaction of graduates, or any number of other measurements related in some way to employment. We therefore believe the suggestion to provide typical employment outcomes is too broad and imprecise to implement.

While we concur that job placement rates would be beneficial to most students, we note that accrediting agency methodologies and requirements for placement rates vary, and inconsistencies in how institutions currently calculate job placement rates limit their usefulness in comparing institutions and programs. The placement rate requirement for short-term programs under § 668.8(g) relies upon auditor attestations of institutional calculations, which again can vary amongst institutions and auditors. Developing a uniform Federal standard for the calculation of placement rates would be a complex and extensive undertaking surpassing the scope of this rulemaking. Nonetheless, should the Department introduce such a standard through future rulemaking, we could add placement rates to the program information website in the future.

Changes: None.

Comments: A few commenters suggested that any median earnings data provided under proposed § 668.43(d)(1)(xi) should be based on the same time periods as those used for the D/E rates and EP measure.

Discussion: We appreciate the commenter's suggestion. While in general we anticipate providing earnings data for the same time periods as those used for calculating the D/E rates and EP measure, we retain the flexibility to provide median earnings during a period determined by the Secretary. For example, if an institution uses the transitional reporting option and transitional metrics are calculated then the cohorts used for determining median debt may differ from the cohorts used for determining median earnings.

Changes: None.

Comments: Several commenters urged the Department to explain that the D/E rates exclude funding from State and local governments and only measure debt burden relative to students, not to taxpayers. One commenter noted that in the 2019–20 award year, public degree-granting institutions received 76.6 billion in State appropriations and 14.5 billion in local appropriations.

Several commenters suggested that the Department explore including an estimate of State and local taxpayer support for programs at public institutions, arguing that doing so would provide the public and policymakers a more accurate understanding of program cost, with one commenter noting that the Department has access to such information through The Digest of Higher Education Statistics.

Discussion: The Department disagrees with the commenters' suggestion that

the regulations unfairly assess for-profit institutions because programs operated by for-profit institutions are in fact less expensive than programs operated by public institutions, once State and local subsidies are taken into account. While some for-profit institutions may need to charge more than some public institutions because they do not have State and local appropriation dollars and must pass the educational cost onto the student, there is some indication that even when controlling for government subsidies, for-profit institutions charge more than their public counterparts. Research has found that the primary costs to students at for-profit institutions, including foregone earnings, tuition, and loan interest, amounted to \$51,600 per year on average, as compared with \$32,200 for the same primary costs at community colleges.¹⁷⁴ This analysis estimated taxpayer contributions, such as government grants, of \$7,600 per year for for-profit institutions and \$11,400 for community colleges.

The goals of this rule are to provide increased transparency of program outcomes and improved oversight of Federal taxpayer funds. While public institutions often benefit from State and local appropriations, we maintain that monitoring, providing, and otherwise overseeing such sources of institutional revenue falls outside the scope of this rule. We further note that non-Federal funding is not exclusive to public institutions and could include any number of sources such as endowments, research grants, charitable donations, private equity, fees from publicly offered services, and so forth. Requiring institutions to report all such sources of funding would be unduly burdensome, and the inclusion of all such sources of funding on the Department's website would likely overwhelm many students and distract from the core information provided under these regulations.

Changes: None.

Comments: One commenter urged the Department to clarify that the financial value transparency information does not measure academic quality (e.g., skill of faculty, learning outcomes, quality of facilities) or the lifetime earnings of graduates.

Discussion: The Financial Value Transparency and Gainful Employment regulations are intended to establish an accountability and transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes,

apprise current and prospective students of those outcomes, and provide better information about program price. Other factors such as those mentioned by the commenter may contribute to these financial outcomes, but we do not believe that students would mistake the financial value transparency information that the Department proposes to present in a straightforward manner on its website as for a direct measurement of academic quality. While the Department believes that students should be informed about the debt and earnings consequences of their postsecondary choices, we may consider adding language to the student program information website noting that the debt and earnings outcomes of programs are a subset of the myriad factors students may consider important in deciding where to attend, particularly if such language is supported by consumer testing.

Changes: None.

Comments: For public and nonprofit institutions, one commenter recommended that the Department additionally identify whether all revenues of the institution are committed to its educational and charitable mission and whether the majority of net tuition revenues in the program are used for post-enrollment instruction and student support. The commenter further suggested that such information should be affirmed in a footnote on the institution's audited financial statement. The commenter opined that this additional information would promote the legitimate nonprofit operation of institutions and shield students from incorrect assumptions that tuition dollars will be used to support their success in cases where the institution diverts funds to recruitment or other purposes. This commenter also suggested initially making this additional information a voluntary option, to accommodate institutions which may need time to add those measure to their internal accounting.

Discussion: While we share the commenter's concern about some nonprofit institutions' use of title IV, HEA revenue for marketing, recruitment, and other pre-enrollment functions unrelated to academic instruction and student support, we do not believe that the financial value transparency website is the best vehicle to address that concern. The Department also received comments related to this issue on both the Financial Responsibility and the Certification Procedures regulations proposed in the NPRM. Those issues will be discussed in a separate forthcoming final rule.

Changes: None.

Comments: A few commenters encouraged the Department to provide disaggregated data whenever possible.

Discussion: We thank the commenters for that suggestion. The metrics in the rule currently focus on whether a program is leading to high-debt-burdens or enhanced earnings for the majority of its completers. We will carefully consider what additional information might feasibly and usefully be added to give students more tailored information on program performance for students in their own demographic group, particularly in light of consumer testing and privacy safeguards.

Changes: None.

Distribution and Linking Requirements

Comments: Several commenters voiced general support for requiring institutions to provide current and prospective students with a link to the Department's program information website and urged the Department to preserve this component of the proposed rule. One commenter argued that students enrolling in postsecondary programs are sufficiently mature to be expected to review the information available to them without requiring institutions to actively distribute a link to the material.

A few commenters expressed concern about requiring institutions to post a link to the Department's program information website on every institutional web page containing information about a program or institution's academics, cost, financial aid, or admissions. One commenter likened this requirement to the requirement in the FAFSA Simplification Act for institutions to provide all elements of the cost of attendance on any portion of the institution's website that describes tuition and fees. This commenter noted that while it appears to be a simple requirement, it has already generated numerous inquiries from institutions about how to comply.

Several commenters noted that although adding links to the Department's program information website to institutions' websites would be a one-time cost and burden, large institutions may have hundreds of web pages requiring these links. These commenters advised that such a requirement could lead to compliance issues if such an institution inadvertently neglected to post the required link on one or a few web pages.

One commenter further noted that monitoring and enforcing such a broad requirement could divert the Department's resources away from more impactful issues and urged the

¹⁷⁴ Cellini, S.R. (2012). For Profit Higher Education: An Assessment of Costs and Benefits. *National Tax Journal*, 65 (1):153–180.

Department to require institutions to link to the program information website only on their main website and on each individual program's landing pages.

Discussion: We thank those commenters for their support. The Department disagrees with the commenter who suggested relying on students to find the Department's website on their own because students enrolling in postsecondary programs vary widely in life experience and financial literacy. For many students, selecting an institution and program of study is likely to be one of the most financially significant decisions of their life. While some students may possess the financial savvy and inclination to independently research and compare institutions and programs, others may not. We believe that requiring institutions to inform students about the Department's program information website under § 668.43(d)(3) and (4) would benefit students by informing them about the existence of information that could aid in their decision making, without unduly burdening institutions.

Furthermore, we do not believe the requirement for institutions to post a link to the Department's program information website on every institutional web page containing information about a program or institution's academic, cost, financial aid, or admissions is confusing or unclear. The requirements pertaining to the posting of Cost of Attendance information under the FAFSA Simplification Act are unrelated to the financial value transparency information established under this rule, and many of the inquiries concerning those Cost of Attendance posting requirements were about the specific content of the information that must be posted to meet FAFSA Simplification Act requirements. We note that for the required financial value transparency information, institutions must post the link to the Department's program information website on all relevant web pages. We believe that institutions can reasonably meet this requirement and, as noted in the RIA, we believe that this activity will require an estimated 50 hours per institution. We expect to provide sub-regulatory guidance and training to institutions in advance of the effective date of these provisions to minimize this burden. With regard to the argument about the potential for inadvertent noncompliance with the posting requirements, we note that an institution could inadvertently fail to comply with any of our regulatory provisions, and it remains the institution's responsibility to have the necessary staff, systems and processes to

be able to comply with all of our regulatory requirements. We do not expect that monitoring and enforcing this requirement will require significant resources and hinder the Department's other compliance monitoring and enforcement efforts.

Changes: None.

Comments: One commenter suggested that publicizing information and directing students to it during their senior year in high school or earlier could better impact enrollment decisions.

Another commenter expressed support for ensuring students receive the information before enrolling or making a financial commitment, agreeing with the Department that information on program value should be provided at relevant points of entry. This commenter further suggested that the Department consider providing access to this information through the FAFSA portal to provide the information to students earlier in the decision-making process in a manner that would not rely on institutional compliance.

Discussion: The timing of when applicants receive information about institutions and programs is critical. Data should be available at key points during the college search process, and applicants should have sufficient time and resources to process new information. Informational interventions work best when they arrive at the right moment and are offered with additional guidance and support.¹⁷⁵

We do not agree that providing information to prospective students during high school or earlier would be more beneficial than providing it closer to when the student makes the decision to enroll. We, however, appreciate the commenter's suggestion to provide information about the program information website to students through the FAFSA portal. While it would not be possible to incorporate this change to the 2024–25 FAFSA portal at this stage of development, we will consider adding it in a future award year.

Changes: None.

Comments: A few commenters opined that the requirements would present obstacles to serving the basic needs of enrolled students by delaying title IV, HEA disbursements. These commenters also opined that the information would arrive too late in the admissions process to affect college enrollment decisions.

Discussion: We do not agree that the requirement to distribute information

about the program information website would disrupt the basic needs of students. We note that the distribution requirements at § 668.43(d)(3) and (4) are not directly tied to the disbursement of title IV, HEA funds. We also disagree that the distribution requirement would arrive too late to affect enrollment decisions. The institution must distribute information about the program information website to any prospective student before the student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution. If the student is considering enrolling in a risky program, the acknowledgment or warning requirements at §§ 668.407 and 668.605 provide additional information and protection.

Changes: None.

Comments: One commenter requested we clarify whether or how the definition of "student" in § 668.2 applies to the new program information website.

Discussion: The definition of "student" in § 668.2 applies specifically to subparts Q and S. The requirements related to the program information website in § 668.43 exist outside of subparts Q and S. Rather than relying upon the definition of "student" in § 668.2, § 668.43(d)(4) requires an institution to provide information to access the program information website to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

Changes: None.

Cooling-Off Period

Comments: One commenter noted that the NPRM preamble text suggests that a three-day "cooling off" period after distributing information about the program information website is required for all enrollments, not just those where warnings are required, while the regulatory text of proposed § 668.43(d)(4) does not include such a requirement. This commenter asked that the Department clarify in the final rule that no pre-enrollment cooling-off period is required except when a warning requirement is in place for the intended program of study.

Discussion: We thank the commenter for alerting us to the discrepancy between the proposed regulatory text and the preamble discussion in the NPRM. We confirm that the three-day cooling off period in § 668.605(f)(2) only applies when a warning requirement is in place for a GE program and does not apply to the distribution of information

¹⁷⁵ Carrel, S. & Sacerdote, B. (2017). Why Do College-Going Interventions Work? *American Economic Journal; Applied Economics*. 1(3) 124–151.

about the Department's program information website under § 668.43(d).
Changes: None.

Student Acknowledgments and GE Warnings—§§ 668.407 and 668.605

General Support

Comments: Several commenters expressed support for the proposed requirement in § 668.407 of the financial value transparency framework for students enrolling in a high-debt program to acknowledge viewing financial value information before the institution may enter an enrollment agreement with the student. One commenter further noted that information and market forces alone are insufficient without an acknowledgment requirement. One commenter expressed support for requiring acknowledgments prior to aid disbursement for poor-performing programs as an effective approach to improving the outcomes of students and encouraging the use of Federal aid at better-performing institutions.

Discussion: We thank the commenters for their support. We have retained the student acknowledgment provision in § 668.407 of the financial value transparency framework, with certain modifications that we explain below. Core features mentioned by these commenters remain the same compared to the proposed rule. Among those features are, for example, that the acknowledgments will not be limited to information about gainful employment programs but instead will extend to certain other postsecondary education programs; that the acknowledgments will be submitted by certain students to the Department through its program information website; and that the students will acknowledge having viewed information on the Department's website regarding particular programs that have substandard results on the D/E rates measure. As the commenters understood, the acknowledgments will help make salient to students, at important junctures in their decision-making processes, certain debt-related and other information about title IV, HEA eligible programs, and thereby assist students in making informed choices about their postsecondary education. Such informed decisions may benefit not only these students but also the Federal Government and others to the extent that title IV, HEA support is channeled, through informed student choices, toward programs that are not leaving graduates with unaffordable debt. Whatever is the full array of values that people pursue through higher education and training, including

nonpecuniary goals involving service to others, unaffordable debt can obstruct the achievement of all those goals.

Changes: None.

General Opposition

Comments: One commenter suggested that requiring acknowledgment of the program information website before disbursement creates a barrier to receiving title IV, HEA funds, and that institutions are prevented from adding additional barriers to title IV, HEA aid by statute. Many commenters argued that requiring students to acknowledge having viewed program information on the Department's website prior to enrollment would delay course registration and impede the disbursement of aid to students in need of such funds to cover costs for housing, food, and other basic needs.

Discussion: The student acknowledgment requirement in § 668.407 of the financial value transparency framework does not conflict with HEA provisions intended to protect student access to title IV aid. Instead, this requirement will provide additional protection to students, as well as taxpayers, by providing certain information to students about programs before institutions enter into enrollment agreements with students.

Under the transparency framework's student acknowledgment rule, in certain circumstances the Department will require prospective students to acknowledge to the Department that they have viewed relevant information on the Department's program information website before signing an enrollment agreement with an institution regarding a certificate program or graduate degree program. The acknowledgment will be made electronically on the Department's website. In itself, this step toward enrollment and title IV, HEA aid is not onerous for students. Moreover, we will except undergraduate degree programs in this final rule (see § 668.407(a)), for reasons explained elsewhere in this document, thus avoiding undue burden for programs where prospective students may not generally apply to a particular major (but rather "declare" a major after being enrolled for some time in the institution). Furthermore, and also as explained below, this final rule states that only prospective students,¹⁷⁶

¹⁷⁶ In § 668.2 of these rules, "prospective student" is defined as an individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program. Potential transfer students are among those who may meet this definition of "prospective student."

not enrolled students, must give acknowledgments when the relevant program has substandard results regarding debt burdens under the debt-to-earnings (D/E) rates measure (see § 668.407(b) and (c)). That adjustment to the regulation relieves much of the commenters' concerns about disruptions of title IV, HEA student aid, and targets the requirement to a group of students most likely to act on the information in considering where to enroll.

We explained in the NPRM our decision to limit the transparency framework's student acknowledgment requirement to programs with high debt burdens under the D/E rates measure,¹⁷⁷ and we adopt that position again here. While many non-GE students surely care about earnings, non-GE programs are more likely to have nonpecuniary goals. Requiring students to acknowledge low-earning information as a condition of receiving aid might risk conveying that economic gain is more important than nonpecuniary considerations. In contrast, students' ability to pursue nonpecuniary goals is jeopardized and taxpayers bear additional costs if students enroll in high-debt burden programs. Requiring acknowledgment of the D/E rates ensures students are alerted to risk on that dimension.¹⁷⁸

Moreover, acknowledgments are a traditional, typical, and simple method of enhancing awareness of information before decisions are made. In this instance, the online mechanism for the acknowledgment will be relatively simple, and the decision in question involves both a student's education and Government support for that education. When programs fail certain performance metrics, the Department will protect prospective students and taxpayers by asking those students to pause and acknowledge information on the Department's program information website before they enter into an enrollment agreement for that program.

We agree that institutions may not add eligibility requirements that would prevent students or groups of students from receiving title IV, HEA aid for

¹⁷⁷ 88 FR 32300, 32336 (May 19, 2023).

¹⁷⁸ We note as well that § 668.605 in subpart S of these regulations, which cover GE programs, includes warnings from institutions to prospective and enrolled students as well as acknowledgments from students to the Department through its website. Those GE warnings and acknowledgments will help inform students when GE programs are at risk of losing title IV eligibility in the following year. And those GE provisions in subpart S will complement the student acknowledgment provision in the transparency framework of subpart Q, the latter of which helps serve the interests of non-GE students where program eligibility based on performance metrics is not at issue.

which they are otherwise eligible. But these student acknowledgment rules do not implicate those protections for students. *Changes:* None.

Comments: A few commenters urged the Department to ensure that institutions receive immediate confirmation when students complete any required acknowledgments through the Department's program information website, to ensure timely disbursement of title IV, HEA funds. One commenter noted that the system for providing D/E and EP metrics has not yet been developed and that, as a result, institutions will not be timely made aware of metric outcomes, causing a delay in disbursements of title IV, HEA funds. One commenter suggested that the Department instead administer financial value transparency acknowledgment requirements through the Free Application for Federal Student Aid (FAFSA), which would provide the relevant information to each student at an important stage in the student's decision process while also eliminating disbursement delays and relieving administrative burden on institutions.

Discussion: We understand the commenters' concerns and we have made certain modifications to § 668.407 as proposed. To begin, in this final rule the Department has decided to require student acknowledgments under that regulation before students enter into an enrollment agreement with the relevant institution (§ 668.407(c)(1)), rather than before an institution may disburse title IV, HEA aid. Pegging student acknowledgments to an enrollment agreement should reduce concerns about unjustified disruptions in title IV aid, while nonetheless enabling students to make informed choices at an adequately early stage in the decision-making process. In the final rule, we also clarify that the Department will monitor an institution's compliance with the pre-enrollment-agreement acknowledgment requirement through audits, program reviews, and other investigations (§ 668.407(c)(2)). Although the students will make acknowledgments to the Department and the Department will operate the acknowledgment process through its website, institutions will check whether the students whom they seek to enroll have completed the acknowledgment. As we have explained, an acknowledgment is a simple yet important step that students must take when § 668.407 applies due to substandard debt-to-earnings results for the relevant program. In addition, we reiterate here that § 668.407 will apply to prospective students (§ 668.407(b)), rather than enrolled students.

We recognize that requiring prospective students to acknowledge the program information prior to an enrollment agreement means that some students will have to take that step before course registration and disbursement of aid. We understand students' need for timely access to title IV, HEA funds not only to cover direct institutional costs but also to cover indirect educationally related expenses. We note again, however, that the acknowledgment process will not be lengthy or particularly burdensome to students. And the adjustments to the rule that we have made in light of commenter concerns should minimize disruption while enhancing informed choice. We believe that such information is necessary to make an informed decision about whether to enroll in a program, and that the urgency of a student's need for this information warrants the potential delay, which again should not be excessive or disruptive.

Moreover, in part to reduce burden for institutions and students, we will limit the acknowledgment requirement in § 668.407 to programs that do not lead to an undergraduate degree. We believe this change will better target the acknowledgment requirements to programs to which students tend to directly apply. In addition, our empirical analysis shows that high-debt-burden programs are relatively rare among undergraduate degree programs outside the proprietary sector.

Commenters are correct in observing that the website for delivering financial value transparency information and administering acknowledgments is not yet developed. As we develop the website and its underlying processes, we will consider ways to efficiently and timely transmit confirmation of completed acknowledgments to institutions. Nevertheless, we recognize the potential for delays and uncertainty as the Department designs and deploys new systems to implement these requirements. To minimize disruption and facilitate a smoother implementation of the Department's program information website and acknowledgment requirements, the Department has specified that the requirements under § 668.43(d) and the acknowledgment requirements under §§ 668.407 and 668.605 are not applicable until July 1, 2026.

We appreciate the commenter's suggestion to administer the acknowledgment requirements through the FAFSA. However, administering the acknowledgment process through the FAFSA would not reach prospective students who have not yet applied for

title IV, HEA funds. The acknowledgment requirement in § 668.407 is limited to prospective students and does not apply to enrolled students. We believe that administering the acknowledgment process through the Department's program information website is the most efficient and effective approach, but we will continue to analyze ways of most seamlessly delivering information to students.

Changes: The Department has specified that the requirements under § 668.43(d) and the acknowledgment requirements under §§ 668.407 and 668.605 are not applicable until July 1, 2026. Furthermore, the Department requires student acknowledgments under § 668.407(c)(1) before students enter into an enrollment agreement with the relevant institution, and the Department will monitor an institution's compliance with the pre-enrollment-agreement acknowledgment requirement through audits, program reviews, and other investigations per § 668.407(c)(2). In addition, we exclude undergraduate degree programs from the acknowledgment requirements at § 668.407(a)(1).

Comments: One commenter suggested that the Department consider a two-year pilot study, during which the student acknowledgment and GE warning requirements would not be applied, to review the earnings and salaries of completers to enable a real-world comparison of costs and earnings.

Discussion: We appreciate the commenter's suggestion. Although we will certainly monitor the median earnings data obtained under these regulations, we believe that the need for the financial value transparency framework and GE accountability framework is too great to delay implementation for a two-year study. As noted above, however, we recognize the potential for delays and uncertainty as the Department designs and deploys new systems to implement these requirements. To minimize disruption and facilitate a smoother implementation of the program information website and acknowledgment requirements, the Department has specified that those requirements are not applicable until July 1, 2026.

Changes: The Department has specified that § 668.43(d) and the acknowledgment requirements under § 668.407 are not applicable until July 1, 2026. In addition, we exclude undergraduate degree programs from the acknowledgment requirements at § 668.407(a)(1).

Comments: Many commenters opined that the proposed warning requirements

in § 668.605 of the GE accountability framework would irreparably harm programs, rendering ongoing recruitment impossible and leading to program teach-outs and closures after warnings were provided to students. Several commenters opined that requiring warnings after a single year of failing the D/E rates or EP measure would fail to account for market shifts, emergencies, disasters, or other unforeseen conditions, and would result in program closures precisely when they are most needed, such as during an economic downturn when many dislocated workers tend to seek retraining. Several commenters argued that such a swift warning requirement does not establish a pattern of poor performance and would offer institutions little or no opportunity to improve troubled programs. One commenter further noted that sudden changes to National or State licensure requirements could have far-reaching effects, causing more students than usual to fail licensure exams and delaying employment, causing programs to fail one or both metrics, and requiring warnings due to circumstances beyond an institution's control. One commenter predicted that these consequences would especially impact institutions that focus on a single program, such as cosmetology institutions, claiming that for such institutions a required warning would be tantamount to an accelerated school closure.

Discussion: We believe that enrolled students and prospective students should receive a warning when a GE program may lose eligibility in the following award year based on its D/E rates or EP measure. We recognize that a program's D/E rates and EP measure may be atypical in a particular year as a result of any number of factors and for that reason a GE program will not lose eligibility for failing the D/E rates or EP measure in a single year. However, a student enrolled in a GE program that loses its title IV, HEA program eligibility because of its D/E rates or earnings premium faces potentially serious consequences. If the program loses eligibility before the student completes the program, the student may need to transfer to an eligible program at the same or another institution to continue to receive title IV, HEA program funds. Even if the program does not lose eligibility before the student completes the program, the student could be, nonetheless, enrolled in a program consistently associated with poor earnings outcomes or unmanageable levels of debt. Accordingly, we believe it is essential that students be warned

about a program's potential loss of eligibility based on its D/E rates or earnings premium.

The student warning will provide currently enrolled students with important information about program outcomes and the potential effect of those outcomes on the program's future eligibility for title IV, HEA program funds. This information will also help prospective students make informed decisions about where to pursue their postsecondary education. Some students who receive a warning may decide to transfer to another program or choose not to enroll in such a program. Other students may decide to continue or enroll even after being made aware of the program's poor performance. In either case, students will have received the information needed to make an informed decision.

We believe that ensuring that students have this information is necessary, even if it may be more difficult for programs that must issue student warnings to attract and retain students, and even in cases where an institution only offers a single program of study. Institutions may mitigate the impact of the warnings on student enrollment by offering meaningful assurances and alternatives to the students who enroll in, or remain enrolled in, a program subject to the student warning requirements.

We disagree with the arguments from commenters about the effects of licensing changes. The Department does not dictate how many hours States require for students to sit for licensing tests. And since States dictate the required program lengths for licensure or certification, we think it is reasonable to assume States have considered the hours needed for someone to then be able to pass any necessary tests. As noted already in this discussion, to the extent there are changes in passage rates, the fact that programs have to fail more than once will mitigate this issue by giving institutions time to improve. Commenters raised the issue of potential changes to the length of GE programs in a part of the NPRM that will be addressed in a separate final rule.

Changes: None.

Comments: One commenter expressed concern that the rule as proposed would require programs without aid to send letters to prospective students stating that their target occupation is a low-income profession.

Discussion: This is incorrect. The warning provision requires schools to distribute warnings to prospective students of GE programs that still are eligible for title IV, HEA aid but are at risk of losing it so that the prospective

student can make an informed decision cognizant of the possibility that the program may lose title IV, HEA eligibility before the student has completed the program. The warning language does not identify any occupations as low-income professions, but rather alerts prospective students to the fact that the program in question has not passed standards established by the Department based on the amounts students borrow for enrollment in the program and their reported earnings, as applicable, and directs prospective students to the relevant program information web page so that they can explore more contextual information.

Changes: None.

Comments: One commenter objected to any warning requirements for GE programs under subpart S, opining that student acknowledgments under subpart Q are sufficient. Another commenter posited that neither the warning nor acknowledgment requirements are necessary because the requirement to post links to the Department's program information website would be sufficient.

One commenter maintained that establishing acceptable levels of performance regarding debt and earnings exceeds the role of government because the Department would substitute its own judgment of acceptability thresholds for those of prospective students whose risk tolerances could potentially differ. This commenter further postulated that some students could rely on the Department's assessment and still realize poor results, misinterpret "no results" as an absence of risk, or unnecessarily forego opportunities because the Department's information increased their risk aversion.

Discussion: The Department disagrees with the argument that the student acknowledgment requirements in § 668.407 under subpart Q obviate the need for GE program warning requirements in § 668.605 under subpart S. Those rules regard different programs, and they involve different information and circumstances. The student acknowledgment requirements under subpart Q are limited to prospective students,¹⁷⁹ and they are limited to programs that do not lead to

¹⁷⁹In § 668.2 of these rules, "prospective student" is defined as an individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program. And "student" is defined, for the purposes of subparts Q and S of this part and of § 668.43(d), as an individual who received title IV, HEA program funds for enrolling in the program.

an undergraduate degree and that have high debt-burden results under the D/E rates measure. In contrast, the acknowledgment and warning requirements under subpart S apply to GE programs (including degree programs) that are at risk of losing title IV, HEA eligibility because of failing either the D/E rates or the EP measure, and include additional content designed to assist prospective students and enrolled students facing a potential loss of funds, such as information about the transferability of credit, availability of refunds, and continued availability of the program of study in the event of a loss of title IV, HEA eligibility. The rules for GE program warnings and acknowledgments are crafted for the special circumstances of GE programs. Hence the student acknowledgment requirements in § 668.407 do not duplicate the GE program warning and acknowledgment requirements in § 668.605. Although the two provisions serve some of the same general purposes, such as informing students who seek title IV, HEA aid about higher education programs, § 668.407 does not eliminate the need for § 668.605.

We further disagree with the contention that the requirement in § 668.43(d)(2) for institutions to post links to the Department's program information website renders both the acknowledgment and warning requirements unnecessary. As discussed above, the timing of the delivery of relevant information significantly affects the impact of that information on students. Absent acknowledgment and warning requirements, even students who may have carefully reviewed information about their program of study on the Department's program information website before enrolling may be unaware of changes in that information that may have occurred since they first accessed the website. The Department seeks to require that, for programs where acknowledgments or warnings are required and before certain specified events such as the signing of an enrollment agreement, students have reviewed up-to-date information including information that may implicate the student's access to title IV, HEA funds in future years to complete the program.

With regard to the commenter's claim that establishing acceptable levels of performance regarding debt and earnings exceeds the role of government, the Department disagrees with the commenter's conclusions. As discussed in more detail under "Authority for this Regulatory Action" in this document, this framework is supported in principal part by the

Secretary's generally applicable rulemaking authority, which includes provisions regarding data collection and dissemination, and which applies in part to title IV of the HEA, as well as authorizations and directives within title IV of the HEA regarding the collection and dissemination of potentially useful information about higher education programs. We also disagree with the notion that the Department may not seek to inform students about program outcomes as they evaluate programs within a lawful range of options for Federal Government support. Existing law and sensible policy indicate that the Department's role in supporting the interests of students, taxpayers, and others is more meaningful than some commenters suppose.

As further discussed above under "Statutory Authority for GE Framework," the basic question of whether the HEA authorizes GE performance measures has been resolved repeatedly in the Department's favor. Questions of how exactly to specify the GE performance metrics involve matters of detail, which the Department is statutorily authorized and well-positioned to resolve. It is not only reasonable but also in accord with all indications of Congress's intent to conclude that a program does not prepare students for gainful employment in a recognized occupation if typical program graduates are left with unaffordable debt, or if they earn no more than comparable high school graduates. In addition, the Department is fully authorized to share information about the debt and earnings outcomes of a program with students, institutions, and the public to the extent that such information is available. In whatever manner the information is labeled, providing this information to students will allow them to make better informed enrollment and borrowing decisions.

Changes: As discussed in *General Opposition* under *Program Information website* above, we have revised the reference to the Department's website as the "program information website" rather than the "disclosure website."

Scope of Acknowledgments

Comments: Many commenters expressed support for requiring acknowledgments from students entering high-debt-burden GE and non-GE programs, but opined that acknowledgments should also be required when students enter low-earning non-GE programs. Some such commenters further argued that: (1) the Department's analysis in the NPRM concluded that more students enrolled

in failing non-GE programs than in failing GE programs; (2) earnings outcomes are important even to students in non-GE programs; (3) students do not differentiate programs by institution type; and (4) not applying acknowledgment requirements to non-GE programs that fail the EP measure would unfairly shield poor-performing programs at public and nonprofit institutions from any meaningful impact of poor performance.

In contrast, a few commenters urged the Department to exempt all non-GE programs from student acknowledgment requirements because of the time and burden associated with identifying relevant students and ensuring that they complete the acknowledgments, or because many non-GE programs are intended as only the first steps of a student's education and necessarily lead to graduate or doctoral studies or clinical work requirements. One commenter theorized that borrowers would likely ignore warnings associated with non-GE program as a result of the REPAYE income-driven repayment plan. One commenter suggested that the Department consider a tiered approach applying acknowledgment requirements to GE programs as well as a subset of low-earning non-GE programs, opining that such an approach would recognize the interests of students who prioritize earnings potential while reducing burden on institutions.

Discussion: We do not agree that students should be required to complete acknowledgments when enrolling in low-earning non-GE programs, nor do we agree that not applying acknowledgment requirements to non-GE programs that fail the EP measure would unfairly shield poor-performing programs at public and nonprofit institutions from meaningful impacts of poor performance. Public institutions are subject to additional layers of oversight and scrutiny at the State or local level, and nonprofit institutions typically are subject to oversight by a board of directors. We do anticipate that a considerable portion of non-GE programs lead to high debt burden or low earnings under the financial value transparency metrics, and we understand that many students seeking to enroll in non-GE programs may place high importance on improving their earnings. But we believe that students who enroll in non-GE programs are more likely to have nonpecuniary goals, and requiring students to acknowledge low-earning information as a condition of receiving aid might risk improperly conveying that economic gain is more important than those nonpecuniary considerations. We concur that most

students likely compare programs rather than institution types, but we note that in many cases the types of programs offered across institutions significantly vary, and public and nonprofit institutions are less likely to predominately market their programs solely based on employment and earnings outcomes.

We also disagree with the requests to entirely exempt non-GE programs from student acknowledgment requirements. As further discussed under “Burden” below, we believe that the burden associated with identifying relevant students and ensuring that they complete the acknowledgments is reasonable considering the benefit of providing relevant and timely information to students who enroll or continue in non-GE programs that do not lead to an undergraduate degree and are associated with high debt burden. We concur that many non-GE programs are intended as the initial stage of a student’s education leading to further graduate or doctoral studies or clinical work requirements, but that does not obviate the relevance of information about debt outcomes in better informing students’ enrollment choices, nor does the possibility that borrowers might ignore warnings associated with non-GE program as a result of the REPAYE income-driven repayment plan take away the relevance of this information.

Changes: None.

Duration of Acknowledgments

Comments: One commenter indicated that the duration of the obligation to obtain acknowledgments under proposed § 668.407(a)(1) of the financial value transparency framework appeared to be unspecified. The commenter recommended that the duration mirror that of GE programs requiring warnings and acknowledgments—that is, until the program receives two consecutive passing outcomes.

Discussion: The Department appreciates the commenter’s suggestion. We have made changes to § 668.407(b)(3) to specify the duration and frequency of the requirement. Under revised § 668.407(b)(3), prospective students must provide acknowledgments until the program has passing D/E rates or three years after the institution was last notified it had failing D/E rates, whichever is earlier. The three-year “look-back” period is relevant only in situations where a program might fail the D/E rates measure in one year, but then not have rates issued by the Secretary in the following year(s) due to the number of completers at that program falling below the minimum threshold necessary for

the Secretary to issue the program’s median debt and median earnings. In choosing to disregard rates over three years old, the Department is balancing the goals of making students aware of the financial risk involved in enrolling in the program and fairness.

A reduction in the number of completers at a program is very unlikely to be indicative of improvement in its performance. As a result, a program that fails the D/E rates measure in one year, and then experiences a decline in the number of completers leading its D/E rates not to be issued, is still likely to be failing the D/E rates measure. At the same time, we do not believe it fair to keep the acknowledgment requirement indefinitely if new rates are not calculated. After several years, continuing to base student acknowledgments on earlier calculated rates yet without confirmation of substandard program performance becomes less helpful to students and ultimately unreasonable. After considering the relevant factors and the importance of an administrable rule, we have chosen a period of three years as a reasonable and balanced intermediate option. That option falls between maintaining the student acknowledgment requirement for a single year (which is the minimum-length option and which would provide the least protection for students under the acknowledgment rule) and the lengthier five-year look-back period (which we will apply under § 668.602(c) for determining whether a GE program has failed a GE measure in two of the three most recent years when the GE measures were calculated). Since GE program eligibility is based on outcomes over three consecutive years in which metrics were calculated, the longer five-year period is apt for that purpose. We are not using the same duration set out in § 668.605 for GE student warnings and acknowledgments because the duration in § 668.605 is based on when an institution mitigates the risk of losing title IV, HEA eligibility for a GE program, which is not a factor for non-GE programs.

Changes: We have revised § 668.407(b)(3) to require acknowledgments annually until the program has passing D/E rates or three years after the institution was last notified that the program had failing D/E rates, whichever is earlier.

Comments: One commenter expressed appreciation for requiring subsequent acknowledgments for re-enrolling students after 12 months, as opposed to a 30-day window.

Discussion: We thank the commenter for their support. We believe that a 12-

month window appropriately balances the need for subsequent acknowledgments for students who re-enroll well after providing an initial acknowledgment with the time and effort needed to secure the acknowledgment.

Changes: None.

Content of Acknowledgments and Warnings

Comments: A few commenters expressed concern about the Department’s decision not to publish specific text for institutions to convey acknowledgment requirements to students. These commenters predicted that offering this discretion to institutions would risk a patchwork approach that could provide some students with more clarity about their debt prospects than others.

Discussion: We disagree with the commenters. While institutions may communicate acknowledgment requirements differently, the acknowledgment would be facilitated through the Department’s program information website. The Department’s website will present information to students in a clear and consistent way with the goal of ensuring students understand the risk of incurring high debt.

Changes: None.

Comments: One commenter noted that the Department makes GE program eligibility determinations, not institutions, and opined that the wording of student warnings regarding GE programs should convey that the Department has chosen to revoke eligibility based on its own criteria.

Discussion: We agree that the Department, rather than an institution, makes GE program eligibility determinations. We disagree, however, with the assertion that warnings to students enrolled in failing GE programs should convey that the Department has chosen to revoke eligibility based on its own criteria. Students must receive a warning when a GE program faces a potential loss of title IV, HEA eligibility after failing the D/E rates or EP measure, but that does not mean that a subsequent loss of eligibility is certain. The institution could take swift and appropriate action that would enable the program to pass the GE metrics in subsequent years, and the Department would encourage that outcome. Even if a program loses eligibility due to a subsequent failure of the relevant GE metric, it would be inaccurate to characterize that loss of eligibility as a choice on the part of the Department. As with other metrics that can result in the loss of title IV, HEA eligibility, such as

failure to achieve acceptable cohort default rates under subpart N of part 668 or failure to comply with 90–10 requirements at § 668.28, the loss of eligibility is a predictable and consistent consequence reflecting the institution's failure to meet an established standard, not a matter of the Department's discretion.

Changes: None.

Comments: One commenter expressed support for retaining the warnings provision to require information about the academic and financial options to continue education at the same institution; whether the institution would refund tuition and fees; and whether students can transfer credits earned to another institution through articulation agreements or a teach-out.

Discussion: We thank the commenter for their support and will retain these components of the student warnings for GE programs.

Changes: None.

Burden of Acknowledgments and Warnings

Comments: A few commenters opined that the proposed requirement in the financial value transparency framework for students to acknowledge having seen information about a high-debt-burden program prior to disbursement of title IV, HEA funds resembles the Department's earlier efforts with the Annual Student Loan Acknowledgment (ASLA). These commenters suggested that, similar to the ASLA, the proposed acknowledgment requirements should be optional rather than required because of the burden to students and potential delays to title IV, HEA disbursements.

Discussion: The Department disagrees with this suggestion because the ASLA requirements serve a different purpose than the acknowledgment requirements of this rule. The Annual Student Loan Acknowledgment provides students an annual reminder of their individually accrued student debt amounts and expected repayment obligations, to enhance debt awareness and encourage students to limit borrowing. The acknowledgment requirements in the rule are targeted towards prospective students considering enrollment in a program that does not lead to an undergraduate degree that leaves students with a high debt-burden (§ 668.407), and current and prospective students of a GE program at risk of a loss of title IV, HEA eligibility (§ 668.605) because of failing either the EP or D/E measures. These acknowledgment requirements are intended to provide timely information to assist students in making informed decisions about whether to enroll or continue in the

program and is targeted only to students enrolled or considering enrollment in programs where the Department has identified concerns with financial value. We believe that making this acknowledgment optional would result in students not viewing and benefiting from the information.

Changes: None.

Comments: A few commenters opined that requirements that institutions directly deliver GE warnings to students, and that students acknowledge having seen the information, would be inefficient and burdensome to students and institutions.

Discussion: While we are sensitive to the fiscal and logistical needs of institutions, we maintain that any burden on institutions to meet the warning and acknowledgment requirements is outweighed by the benefits of the debt and earnings outcomes information to students in making better informed enrollment and borrowing decisions. The Department will clearly notify institutions about any programs for which warnings or acknowledgments will be required. Although, as noted above, we offer institutions flexibility to tailor communications about acknowledgment requirements in a manner that best fits the needs of their students, the required text for warning notices for GE programs will be provided to institutions. We therefore expect that the burden to institutions in administering the warning and acknowledgment requirements to be manageable.

Changes: None.

Comments: Another commenter noted that for non-GE programs, it would be difficult to identify which students require acknowledgments, as students may initially be in an undeclared major, may enroll in multiple majors, or may change majors mid-term or mid-year.

Discussion: We acknowledge that it may seem unclear whether acknowledgment requirements would apply in the situations noted by the commenter. For this reason, as discussed above, we will limit the acknowledgment requirements of § 668.407 to eligible programs that do not lead to an undergraduate degree. We believe this change will better target the acknowledgment requirements to programs to which students tend to directly apply, and should eliminate most of the situations identified by the commenter including for undeclared majors, as an undeclared major would be within the undergraduate degree program for which an acknowledgment would not be required. Our analysis shows that high-debt-burden programs are relatively rare among certificate

programs and graduate degree programs outside the proprietary sector, so we believe the impacts of this change on students will be minimal. To be clear the warnings and acknowledgment requirements in § 668.605 apply to all GE programs. Based on the Department's data and experience, it is extremely rare for students to enter such programs without a declared program major.

Students enrolled in multiple majors that do not lead to an undergraduate degree will complete acknowledgments for each program for which acknowledgment requirements would otherwise apply. For changes of program, acknowledgment requirements will begin when the student changes to a program for which acknowledgments are required. The Department intends to provide further sub-regulatory guidance and training prior to the effective date of the acknowledgment requirements.

Changes: None.

Comments: One commenter indicated that it would be burdensome and resource-intensive to require institutions to affirmatively provide students with transfer information in GE warnings and suggested that the Department instead only require institutions to provide a person for students to contact for questions about transfer eligibility.

Discussion: We do not agree that the requirement to provide transfer-related information to students in GE warnings is overly burdensome. The GE warning provisions generally require institutions to notify students about the transferability of credit to other programs offered by that institution. These warning provisions do not broadly require institutions to confirm the transferability of credit to other institutions, except in the case of an established articulation agreement or teach-out plan. We believe it is reasonable to expect an institution to be well aware of its own policies regarding transfers of credit amongst its own programs, and to communicate that information to students when required in a GE warning. It is equally reasonable to expect an institution to understand and communicate details about the transferability of credit in an established articulation or teach-out plan to which the institution is a party. With regard to the commenter's suggestion that the Department instead only require an institution to provide access to a person who students may contact with questions about transfer eligibility, we expect that institutions would already provide access to such a resource under the administrative capability requirements at § 668.16(h), as such

information would comprise conditions that may alter the student's aid package.
Changes: None.

Timing of Warnings

Comments: One commenter claimed that the requirement to provide warnings to prospective GE students who have contacted or been contacted by an institution on a single occasion is premature, as there is no indication that a prospective student is seriously considering enrolling in the program at such an early point. Instead, this commenter suggested that the Department change the proposed requirement so that, instead of requiring warnings at the first contact about the program, warnings would be provided before the student signs an enrollment agreement or makes a financial commitment to the institution, consistent with the timing of the requirement at proposed § 668.43(d)(3) to provide information about the Department's program information website. This commenter also argued that a requirement to provide warnings any time before the GE program loses eligibility is premature, because changes made by the institution to the program or changes in external forces such as the labor market could cause the program to pass the D/E rates and EP measure and remain eligible.

Discussion: We do not agree that a requirement for an institution to provide a GE warning to prospective students who have initially contacted or been contacted by an institution is premature, nor do we agree that it would be more appropriate to provide the GE warning before the student signs an enrollment agreement or makes a financial commitment to the institution. We believe it is important that prospective students have this critical program information early in the decision-making process, when students may be comparing many institutions and programs, so that students have the benefit of understanding the debt and earnings risks of the GE program before investing significant time into investigating it.

Additionally, we disagree that a requirement to provide GE warnings any time before the GE program loses eligibility is premature. A GE program that has failed the D/E rates or EP measure is at risk for loss of title IV, HEA eligibility. Such a loss of eligibility would significantly impact students, who may be unable to complete their program of study and may need to transfer to another program or institution. Given the seriousness of these consequences to students, we believe it is imperative that students are

alerted without delay and provided information to better inform their decision making.

Changes: None.

Comments: One commenter recommended that we should extend the deadline to provide warnings to enrolled students from 30 to 60 days after the date of the notice of determination, to provide institutions the time necessary to identify the appropriate students and accurately issue the warnings, while still allowing institutions to perform other necessary functions.

Discussion: We believe that 30 days from the date the Department issues a notice of determination that a GE program has failed the D/E rates or EP measure is a reasonable period of time for institutions to identify and distribute warnings to students enrolled in that GE program. We note that institutions should generally be well aware of which students are enrolled in each of the institution's programs. The Department further notes that the administrative capability regulations at § 668.16(b)(2) require an institution to use an adequate number of qualified staff to administer the title IV, HEA programs. The Department considers those requirements to include the distribution of required GE warnings to students. Moreover, § 668.16(b)(3) requires institutions to have a system in place to communicate to the financial aid administrator all information maintained by any institutional office that impacts students' title IV, HEA eligibility, including information about which students are enrolled in a particular program of study.

Changes: None.

Cooling-Off Period After Warnings

Comments: One commenter expressed support for the three-day cooling-off period after institutions deliver GE warnings to students, as prescribed in § 668.407(f)(2). The commenter encouraged the Department to consider additional guidance concerning the type of communication allowed between the institution and the student during the cooling-off period, such as stipulating that only students can initiate contact with the institution or communication from the institution may only occur via email.

Discussion: We thank the commenter for their support, and we appreciate the suggestion to provide additional guidance on allowable types of communication during the cooling-off period. Although we do not believe that this level of specificity is required in the regulation, we expect to provide additional sub-regulatory guidance and

training prior to the effective date of the rule.

Changes: None.

Comments: One commenter supported the Department's decision not to consider a student acknowledgment or GE warning as evidence against a borrower's loan discharge application, but expressed concern that institutions could exploit the warnings and acknowledgment requirements to try to insulate themselves from legal liability for misconduct and recommended that the Department include language providing that neither the warnings nor the acknowledgments can be used by an institution as a defense to deceptive practices claims brought by students or government agencies in administrative or judicial proceedings.

Discussion: The Department thanks the commenter for their support. While we share the commenter's concern, we are not changing the regulatory language because we believe that categorically limiting the defenses institutions can raise in the types of litigation noted by the commenter would extend beyond the scope of the Department's authority.

Changes: None.

Alternative Languages for Warnings

Comments: Several commenters opined that the requirement in § 668.605(d) to deliver warnings in alternative languages is overly vague, would be burdensome for institutions to administer, and could result in discrimination claims. Commenters suggested that the Department produce a template format and content that can be used unilaterally for consistency across institutions; specify the minimum required languages for translation; only require that warnings be available in English and in any other language in which the program offers instruction; or allow the warning to be posted as a disclaimer on admissions and enrollment materials.

Discussion: The Department disagrees that the requirement to deliver GE warnings in alternative languages is overly vague, burdensome, or would result in discrimination claims. The Department expects an institution to be reasonably aware if it admits and enrolls students with limited proficiency in English and expects institutions to provide required GE warnings in a language relevant to the student. Translation tools and services are available to institutions to aid them in meeting this requirement. We believe that a warning template would be of limited use given the variety of potential information related to transferability of credit, written arrangements, and teach-

outs, and we further note that the regulation provides a helpful framework from which to craft the relevant GE warning language. Specifying the particular languages required for translation or only requiring that GE warnings be available in English and in the languages in which the program offers instruction would exclude some students from benefiting from content of the GE warnings.

The Department disagrees with the suggestion to allow the GE warning to merely be posted as a general disclaimer on admissions and enrollment materials. We want students to view any required GE warnings and have the opportunity to act upon the information. The timing and manner of information delivery can greatly affect whether the information is received and understood, such that audiences may use the information in their decisions. We believe the GE warning must be distributed directly to students, not provided as a general disclaimer. As discussed further below, the information at issue is critical for students when a GE program is at risk of losing eligibility to participate in title IV, HEA.

Changes: None.

The First Amendment and Warnings

Comments: A few commenters argued that a required warning under § 668.605 of the GE accountability framework, particularly a warning rule using prescribed language, may constitute compelled speech that may violate an institution's constitutional rights under the First Amendment. A few such commenters noted that the First Amendment extends to people and corporations alike, covers all types of lawful speech including factual disclosures, and protects the right to refrain from speaking at all. One commenter further opined that to survive legal scrutiny, a regulation must be narrowly tailored to promote a compelling government interest and suggested that the Department already has a narrowly tailored solution in the College Scorecard, which includes average student debt and average earnings. Another commenter posited that the warning provisions would require institutions to parrot the Department's determination of the program's value without regard for the reliability of the underlying data or the non-pecuniary value of the program to students.

Discussion: The Department disagrees. The relevant provisions of the GE program accountability framework will provide students with a straightforward, purely factual, and

uncontroversial warning when there is a serious risk that title IV, HEA aid will not be available at a given GE program. These provisions will require institutions that operate these at-risk GE programs to deliver a one-time warning to students with whom they already have a relationship, through enrollment or outreach and contact as prospective students.¹⁸⁰

As discussed above, the unavailability of title IV, HEA assistance is an undeniably serious consequence for students who are enrolled in or considering whether to enroll in a GE program. In addition, the Department has an overwhelming interest in enabling informed student decisions before government resources are directed toward at-risk programs. And the communicative burden on institutions will be minor at worst, given that they will remain free to deliver their own messages to students. A responsible institution would strive to warn students of the potential loss of eligibility in these circumstances, and the rule aims to require participating institutions to act responsibly. The GE warning rule is an entirely reasonable and constitutional requirement for institutions that benefit from title IV, HEA aid to students. Such rules are consistent with the First Amendment's guarantee of the freedom of speech.

The justifications for a warning are especially strong in these circumstances—situations involving the need to inform students about the risk to student aid before Federal funds are used in programs that are supposed to train and prepare students for gainful employment in a recognized occupation or profession—not education of all kinds. In commercial speech cases, courts have asked whether a regulation directly advances a significant government interest and is a reasonable fit between means and ends.¹⁸¹ Courts also have recognized broader government authority to require disclosure of accurate information about services and products,¹⁸² allowing for

the preservation of various consumer protection laws. Furthermore, the GE warning rule involves participants in Federal funding programs, rather than the regulation of private parties who are not seeking government support.¹⁸³ Whatever the applicable test, the GE warning rule will satisfy it.

The Department's interests in informed student decisions and protection of tax-supported government resources are obviously important, and warnings will directly advance those interests. The rule applies to institutions that operate at-risk GE programs and that have established relationships with their enrolled students, and that have contact with prospective students. The Department understands the obvious threat to students and taxpayers when the former enroll in programs that turn out losing eligibility under title IV, HEA. But the Department does not have the advantages of institutions in their ability to deliver necessary warnings to both enrolled and prospective students, who are in the process of making decisions about higher education. And institutions should understand why students need to obtain the information at issue. Given the stakes for students and taxpayers, the College Scorecard does not provide a direct warning to students and, therefore, is not an adequate substitute for warnings from participating institutions that their GE programs are at risk.

In addition, the GE warning rule is carefully tailored to the Department's interests, while the burden on participating institutions' speech will be minimal. As described in § 668.605(a) and (b), the warning is a one-time obligation, with a narrow exception for students who seek to enroll 12 months after a warning. Furthermore, § 668.605(e) and (f) allows institution to choose among more than one method of delivering the warning, including an email or other electronic means. It is true that, when a warning is delivered in a written form, § 668.605(e) and (f)

¹⁸⁰ In § 668.2 of these rules, "prospective student" is defined as an individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program. And "student" is defined, for the purposes of subparts Q and S and of § 668.43(d), as an individual who received title IV, HEA program funds for enrolling in the program.

¹⁸¹ See, for example, *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 564 (1980); *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989) (stating that the test involves reasonable fit).

¹⁸² See, for example, *Zauderer v. Office of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985) (testing advertiser disclosure

requirements for a reasonable relationship to a governmental interest in preventing deception, and for whether the requirements are unduly burdensome to speech); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 259–53 (2010) (following *Zauderer*); *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 540–42 (D.C. Cir. 2020) (same). Other First Amendment cases regarding disclosures are collected in note 165, and we further discuss the freedom of speech in that discussion of the Department's program information website.

¹⁸³ See generally *United States v. American Library Ass'n*, 539 U.S. 194 (2003) (addressing Federal assistance for internet access and a condition on assistance involving internet filters); *United States v. Aguilar*, 515 U.S. 593, 606 (1995) (recognizing that private parties may voluntarily agree to assume an enforceable duty not to disclose information).

indicates that the warning must be separate from other communications from the institution. That provision advances the Department's interests in an effectively communicated warning and does not prohibit other messages from the institution such as a separate email or electronic communication.¹⁸⁴ In this rule, moreover, the Department chose not to ask institutions to deliver continuous warnings such as by posting messages on their own websites or incorporating warnings into their promotional materials. In our judgment, the warning rule in § 668.605 is necessary and adequate based on the Department's experience and available information. As a consequence, the burden on institutions will be minimized.

Other features of this GE warning rule likewise moderate any burden on participating institutions' preferred messages. In § 668.605(c), the Department selected carefully a list of factual, objective, and commonsense items to include in warnings to students when their GE programs are at risk: notification that the GE program has not passed the Department's standards, and that the program could lose access to Federal grants and loans when the next round of results are available; a link to the Department's program information website along with notification that the student must acknowledge having viewed the warning through the Department's website before disbursement of title IV, HEA funds; and, in the event that the program does lose eligibility to participate in the title IV, HEA programs, a description of options within the institution, an indication of what the institution plans to do regarding teaching and refunds, and an explanation of whether students may transfer credits to other institutions. Each of these items is independently valuable. Notably, however, the rules do not require participating institutions to adopt the Department's view on program value, as one commenter feared.

Certain details for warnings will be specified in a future notice in the **Federal Register**, consistent with the terms of § 668.605. But the rule clearly does not require any script that would compel any participating institution to misrepresent its views about what is a high-value program, low-value program, or any other topic. The Department does want students to be warned effectively and accurately but respects the

legitimate interests of participating institutions to maintain their own views and to communicate those views. We will avoid language in the GE warnings that may be unduly controversial, misleading, or distracting.¹⁸⁵ As we discuss elsewhere in this document, institutions can correct errors in certain calculations to increase the accuracy of the outcome measures. That process is part of the Department's effort to make available factual information about programs that is readily comparable and easily understood by students and the general public. At the same time, institutions will remain free to hold and express their own views on which if any program metrics are best through their own channels of communication.

This is not the first instance in which regulations have required individual, direct communication by institutions with consumers about Federal aid. Apart from the 2014 Prior Rule, section 454(a)(2) of the HEA¹⁸⁶ authorizes the Department to require institutions to make disclosures of information about Direct Loans, and Direct Loan regulations require detailed explanations of terms and conditions that apply to borrowing and repaying Direct Loans. The institution must provide this information in loan counseling given to every new Direct Loan borrower in an in-person entrance counseling session, on a separate form that must be signed and returned to the institution by the borrower, or by online or interactive electronic delivery with the borrower acknowledging receipt of the message.¹⁸⁷ Like the GE warning rule adopted here, under the loan counseling rules, institutions must provide warnings directly to the affected consumers.

Although we thoroughly considered the commenters' concerns regarding the First Amendment, we are convinced that the final regulations are constitutional. Additionally, we took into account a range of concerns expressed by commenters regarding disclosures and warnings, along with the Government interests in providing students an effective warning regarding a program's performance and eligibility status. Our judgment, in sum, is that the GE warning rule is both sound policy and constitutional.

¹⁸⁵ Contrast the warning that was criticized in a dictum in *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 154 n.7 (D.D.C. 2012), which expressed concern about a "statement that every student in a program 'should expect to have difficulty repaying his or her student loans.'" This rule does not require such a message.

¹⁸⁶ 20 U.S.C. 1087d(a)(2).

¹⁸⁷ 34 CFR 685.304(a)(3).

Finally, the Department disagrees with a commenter's suggestion that the final rules are impermissible because any regulation of GE programs is content-based and subject to strict judicial scrutiny. The commenter's source of concern appears to be the GE statutes that create the distinctions between types of institutions and programs that prepare students for gainful employment. Regardless, we reiterate that the D/E rates and EP metrics focus on completer outcomes rather than program curriculum. We also observe that institutions have the option of not participating in title IV, HEA student aid programs. Title IV offers eligible institutions the option to participate in student aid programs. It does not compel institutions to prefer one curriculum over another.

Changes: None.

Students Switching Programs

Comments: A few commenters recommended that the Department exempt from the acknowledgment requirements in § 668.407 all students who transfer from one program to another within an institution or who have not declared a major. For undeclared majors, a few commenters suggested that the acknowledgment requirement apply once the student selects a major.

A few other commenters suggested instead that the Department address program transfers and undeclared majors by listing all of a school's programs on the program information website, with failing programs in the credential level of the student at the top of the list, and clearly marking all programs as passing or failing, or noting where no information is available. One commenter added that we could use the College Scorecard for this purpose, provided it included the relevant information.

Discussion: As noted above, the student acknowledgment requirements in § 668.407 are aimed at providing information to prospective students before they enter into enrollment agreements with an institution. While we agree with commenters' arguments that this information would be valuable to already enrolled students who are considering changing their major, we do not believe the benefit of requiring acknowledgments to such students would outweigh the administrative burden of requiring students to provide such information prior to switching or declaring majors. Students' educational pathways are complex, and they may form their preferences about an ultimate field of study course-by-course or class-by-class as they progress. There may

¹⁸⁴ See *CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 849 (9th Cir. 2019) (observing that the regulation at issue permitted retailers to add information if the information was distinct).

therefore be no obvious time to trigger a requirement that they view the program information website, and students may effectively have already made their decisions prior to being prompted to view the information. Accordingly, the Department believes it is best to rely on publicizing the availability of the information to all students to increase the odds students will have the relevant information available to them to inform choices in this situation. In this connection, we may consider listing links to information about all of a school's programs on the Department's program information website, with clear designations of each program's status under the financial value transparency metrics.

Changes: None.

Comments: One commenter urged the Department to ensure that transfer students from one institution to another acknowledge the information before receiving Federal aid for the receiving program.

Discussion: As noted above, transfer students to an institution are considered prospective students and so the acknowledgment requirements in § 668.407 apply.

Changes: None.

Impact on Loan Discharges

Comments: A few commenters recommended that we omit proposed §§ 668.407(d) and 668.605(h), which provide that the Department will not consider a student acknowledgment or GE warning as evidence against a borrower's loan discharge application. These commenters also opined that the proposed acknowledgment and warning provisions are underly nuanced and that the Department could not rule out in all cases the possibility that a warning or acknowledgment would be irrelevant. Additionally, the commenters noted that a final rule adopted by the Department in 2022¹⁸⁸ contained a provision requiring the Department to use all information in its possession when evaluating borrower defense claims. The commenters contended we should consider a warning or acknowledgment to constitute other relevant information about which the Department is aware.

Discussion: The Department disagrees with the suggestion to omit §§ 668.407(d) and 668.605(h). Under the borrower defense provisions at § 685.401(b), actionable circumstances for a borrower defense claim include a substantial misrepresentation; a substantial omission of fact; an

institution's failure to perform its contractual obligations to the student; aggressive and deceptive recruitment; or a State or Federal judgment against the institution, including an institution's termination or denial of recertification by the Department. The student acknowledgments provided under the financial value transparency framework regarding D/E rates, as well as the warnings and acknowledgments under the GE program accountability framework regarding D/E rates and the EP measure, pertain specifically to a program's outcomes that are provided for students and their family. The course of dealings and information shared between an institution and its students remain the focus of whether a student qualifies for a borrower defense discharge. The borrower defense regulations address the consideration of the relevant facts related to the borrower defense claim. A student's acknowledgment of a program's failing D/E rates would be one consideration but would not be dispositive. We anticipate that in acknowledging having viewed the financial value information on the Department's website, borrowers will consider this information in the context of other information they may receive, including from institutions.

Changes: We have revised §§ 668.407(d) and 668.605(h) to specify that the provision of an acknowledgement or warning will not be considered "dispositive" evidence in any borrower defense claim.

Comments: One commenter supported the Department's decision not to consider a student acknowledgment or GE warning as evidence against a borrower's loan discharge application, but expressed concern that institutions could exploit the warnings and acknowledgment requirements to try to insulate themselves from legal liability for misconduct and recommended that the Department include language providing that neither the warnings nor the acknowledgments can be used by an institution as a defense to deceptive practices claims brought by students or government agencies in administrative or judicial proceedings.

Discussion: The Department thanks the commenter for their support. While we share the commenter's concern, we are not changing the regulatory language because we believe that categorically limiting the defenses institutions can raise in the types of litigation noted by the commenter would extend beyond the scope of the Department's authority.

Changes: None.

Certification Requirements for GE Programs—§ 668.604

Comments: One commenter expressed concern that the timing of the requirement to certify GE programs may be overly burdensome for institutions, given the projected timing for institutional reporting and notification of D/E rates and EP measures. This commenter requested that the Department extend the certification deadline beyond December 31, 2024, to provide a more generous transition period.

Discussion: We do not anticipate the initial transitional certification requirements for GE programs to be particularly burdensome. Even institutions with many GE programs would generally submit a single transitional certification, likely through eligcert.ed.gov or its successor system. While some analysis is required on the part of institutions to know whether each GE program meets any applicable State licensure or accreditation requirements, the Department notes that, even in the absence of the GE certification requirements, institutions should be knowledgeable about the programs they offer. We reasonably expect institutions to keep their programs current and compliant with State and accrediting agency policies and requirements.

The December 31, 2024, deadline for GE program certification is entirely reasonable, especially given our decision to extend the transitional data reporting option to GE programs, as discussed under "Reporting" above, which already provides a more generous transition period.

Changes: None.

Ineligible GE Programs

Impact of Ineligibility

Comments: Two commenters voiced concern that a program's loss of eligibility to participate in the title IV, HEA programs will force many students to withdraw. According to these commenters, some students may abandon their education, others may struggle to find another institution willing to accept them, and others may have to retake some of their classes or restart their clinicals, thereby devaluing the taxpayer's investment in the student's education.

Another commenter discussed the lesser options for education in their field if their institution were to close, commenting that community colleges offer less in-depth programs in their field of study, located in areas with more limited housing options.

¹⁸⁸ 87 FR 65904 (Nov. 1, 2022).

Discussion: As we illustrate in the RIA, most students in programs projected to fail the accountability metrics have alternatives with better student outcomes available to them. In most cases, then, where programs lose eligibility, we expect most students to reenroll in programs that result in higher earnings, less debt, or both. We acknowledge that a program's ineligibility may present some obstacles to some students' ability to complete their programs, but believe that these obstacles do not justify continuing to direct further taxpayer funds to programs that fail to meet standards. By providing prompt notice and an overview of options in student warnings, the GE framework will give students options to take action before sinking too much of their time, efforts, funds, and limited title IV, HEA aid into programs that do not lead to adequate student outcomes.

Changes: None.

Comments: Many commenters raised concerns about how the proposed rules would have disproportionate effects on cosmetology and massage therapy schools. Commenters said the rules would lead to the widespread closure of these schools. Commenters noted that many of these schools are also small businesses. Commenters further opined that these negative effects would be felt not just by supposedly bad cosmetology schools.

Commenters then proceeded to raise concerns about multiple follow-on negative effects from these closures. They raised the possibility of negative effects on students, including reduced opportunities for women, people of color, immigrants, persons with disabilities, and other groups that are traditionally underrepresented in postsecondary education. Commenters also raised concerns about students losing access to Federal aid in the middle of programs, which would discourage continued enrollment.

Commenters also argued that community colleges and high schools would not be able to accommodate the influx of students interested in attending cosmetology programs after many private cosmetology schools closed. They also claimed schools would not be able to meet the demand for massage therapists.

Commenters further cited the effects of closure on unemployment and local communities. Commenters particularly emphasized the effects of businesses hiring graduates of programs, and the inability to fill in-demand jobs if programs and institutions close. They also said unemployment would increase from students who would otherwise

have found jobs after attending cosmetology schools. Others claimed thousands of employees from these schools would lose their jobs.

Commenters also expressed concern that closures would have negative effects on health, safety, and sanitary conditions as more services would be provided in homes and in unlicensed or uninspected facilities.

Discussion: We disagree with the commenters about the likelihood that closures would be widespread, as well as the negative effects that would come from any closures that might occur.

Regarding the extent of closures, commenters did not consider the large numbers of students attending cosmetology schools but not receiving Federal aid under title IV, HEA, as well as the significant number of cosmetology schools that do not participate in title IV at all. For example, across all institutions that participate in the title IV, HEA programs that award cosmetology certificate programs, we estimate the average institution awarded about 38 percent of its credentials to students who did not receive any Federal aid.¹⁸⁹ Moreover, a review of licensure examination results from California¹⁹⁰ suggests that only about one-third of schools with students taking the cosmetology licensure exam participate in the title IV, HEA programs. In a similar study cited in the RIA, Cellini and Onwukwe find the analogous share in Texas is about 14 percent.¹⁹¹ The same data used in these studies, along with more rigorous academic studies,¹⁹² suggest that loss of title IV, HEA eligibility among cosmetology schools results in schools adjusting their tuition downward (suggesting that students may not face higher costs of attendance despite losing access to title IV aid), and that their graduates still pass licensure exams at similar rates. These findings suggest that commenters' assertions that the loss of

Federal aid eligibility would automatically lead to closure and a reduction of opportunities for students may not be correct. There is a difference between an institution losing access to title IV, HEA funds and closing—a distinction that is particularly evident in the cosmetology space.

We also emphasize that the Federal financial aid programs are entitlements for students, not institutions of higher education. The GE accountability framework is designed to protect both Federal investment and student investment in programs of higher education. Students pursuing higher education are not just investing taxpayer and personal funds to attend a GE program, but are also incurring opportunity costs. The GE eligibility rules that we adopt here do not assess whether a program or a school is in some general sense “good” or “bad,” which are labels the commenters did not define. More concretely, a student directing their limited title IV, HEA aid to a GE program that does not prepare them for gainful employment in a recognized occupation has lost the opportunity to use those funds to attend a different educational program that would better serve their goals. The D/E rates and earnings premium measures provide objective and evidence-based metrics to direct Federal funds to programs that do not saddle students with more debt than they can afford or leave them with earnings prospects no better than they would have had with only a high school diploma.

We also disagree with the arguments from commenters about the effects of closures. First, as we note above, there is a possibility of enrollment moving into programs that are still eligible for title IV, HEA funds or those that operate solely on the private market. Second, commenters did not consider the potential responses from programs that do pass the GE program accountability framework. For instance, a passing program may choose to expand its enrollment and meet any excess demand. Students may also choose to enroll in different types of programs, which are likely to provide them better economic benefits since passing programs generally have a combination of higher earnings and lower debt. The Department thus believes commenters overstate the potential loss of postsecondary opportunities.

We also disagree with comments about the negative effects of closures on particular groups of students, such as women and students of color. The Department has already provided an extensive discussion of the effects of these rules on women and students of

¹⁸⁹ This analysis compares data on the total number of awards granted during 2016 and 2017 reported by institutions in the Integrated Postsecondary Education Data System (IPEDS), which covers both federally aided students and not-federally aided students to the number of graduates in such programs reported to the National Student Loan Data System—covering only federally aided students.

¹⁹⁰ California makes these data available at this website: https://www.barbercosmo.ca.gov/schools/schls_rslts.shtml.

¹⁹¹ Cellini, S.R. & Onwukwe, B. (2022). Cosmetology Schools Everywhere. Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Postsecondary Equity & Economics Research Project working paper, August 2022.

¹⁹² See, for example, Cellini, S.R., & Goldin, C. (2014). Does Federal student aid raise tuition? New evidence on for-profit colleges. *American Economic Journal: Economic Policy*, 6(4), 174–206.

color, which can be found in the “Demographics and Outcomes” section of this final rule. Many of the other categories identified by commenters are not ones where there is any centralized data collection to identify them, such that there is no analysis of these populations that could be conducted. But we do not see a persuasive reason why the analysis conducted on women and students of color would not capture the largest demographic groups enrolling in cosmetology, massage therapy, and other beauty school programs. Given that cosmetology schools represent one of the largest areas of student enrollment in GE programs, we believe that analysis properly captures the consideration of the effects on these groups of students at beauty schools.

We also disagree with commenters’ arguments about the effects of closure on local communities and businesses. The Department does not believe that a shortage of programs of study within a field is adequate justification for directing title IV, HEA funds to programs that do not lead to adequate student outcomes. If there is a shortage of eligible programs in a high-demand field, this provides an opening for institutions to expand the capacity of existing high-quality programs or to create new high-quality programs to meet that need. Moreover, employers also have tools available to them if they have jobs they cannot fill, such as increasing wages and benefits. Given that the beauty industry is predicated on charging clients for their services, they could also choose to either reduce their profit margins or pass some of these increased costs on to their clientele. We also reiterate that commenters have not considered the presence of a significant number of schools in these areas that do not participate in the title IV, HEA programs.

Finally, regarding concerns about the effects of the rules on health and safety, we note that cosmetologist licensure and facility inspection are areas regulated and enforced at the State and local levels, not at the Federal level. The Department trusts the appropriate State and local entities to maintain appropriate standards for health and safety within their jurisdiction.

Changes: None.

Comments: A few commenters mentioned the potential impact of school closures contributing to a shortage of practicing veterinarians and the competitive nature of veterinary school seats, contending that the loss of program eligibility would reduce the number of future veterinarians. Other commenters suggested that the D/E

metric would result in the closure of numerous Doctor of Veterinary Medicine programs.

Discussion: While a determination of ineligibility for title IV, HEA aid may lead to closure of programs in fields of high demand that do not produce adequate student outcomes, we believe that this does not justify continuing to steer students and funds to programs with inadequate student outcomes. It is also possible that the need for additional training opportunities in a particular field may lead to the establishment of new programs or the expansion of existing programs that lead to better student outcomes.

Changes: None.

Comments: Some commenters raised concerns about how the GE accountability framework and program ineligibility stemming from it could create challenges for businesses trying to hire in the allied health, business, and nursing spaces.

Discussion: We disagree with the commenters. Regarding nursing and business, we do not see evidence of high rates of ineligibility. As shown in Table 4.18, these two programs have the smallest number of students in failing programs out of all the programs with the largest number of failures. But for these two areas as well as allied health, we do not think a shortage of programs of study within a field is adequate justification for directing title IV, HEA funds to programs that do not lead to adequate student outcomes. If there is a shortage of programs and excess demand by employers, then institutions would have an incentive to expand the capacity of passing programs or employers would need to raise wages. Either solution could help expand the number of offerings to what is needed.

Changes: None.

Comments: One commenter stated that cosmetology licensure requirements provide vital consumer protection and make any loss of funding to cosmetology programs unnecessary.

Discussion: The commenter conflates the protection clients of cosmetology program graduates receive from licensure requirements with the protection the Department seeks to establish for students themselves under the GE accountability framework. These are not equivalent and are not even protections for the same populations. The Department believes that both provide important protections.

Changes: None.

Alternatives to Ineligibility

Comments: One commenter suggested that title IV, HEA eligibility should be grandfathered for students who were

already enrolled in a program at the time of its first fail rating. Two other commenters similarly suggested allowing students already enrolled in a program losing eligibility for title IV, HEA aid to continue receiving aid through completion of the program if they decided to continue with full knowledge that the program is failing. Many commenters voiced a belief that students already enrolled in a program that loses eligibility should be able to choose to continue in the program knowing the program’s failing rates and continue to access Pell funds to complete the program since loans come with negative consequences if default occurs, while Pell Grants come without repayment obligations. One commenter suggested allowing students to continue to borrow title IV, HEA loans for programs that would lose eligibility, adjusting loan limits for those programs downward to amounts that would bring D/E rates to within amounts that would pass.

Discussion: More harm can come to students from continuing in a failing program than merely accruing additional loan debt. Students are limited in the amount of time for which they can receive Pell Grants. Continuing in a failing program and receiving a Pell Grant would exhaust some of their eligibility. Continuing in a program that produces inadequate student outcomes will also consume student time and effort. This invested time comes with more readily apparent costs, such as increased costs for childcare or lost opportunities for paid employment, but also with the loss of substitutes—with the time invested in a failing program, the student could have been pursuing a course of study that would have better advanced their career.

It is also possible that if the institution became ineligible to participate in the Direct Loan program, but Pell funding continued, students would merely replace their Federal student loans with private loans. Continuing in a failing program without Direct Loans would leave students in a worse position than if we took no action.

It would be mathematically unworkable to lower limits on Direct Loans to amounts that would cause a failing program to pass D/E rates. D/E rates are calculated across a student’s entire enrollment in a program and different students may take a different number of years to complete a program, so annual borrowing could not be precisely adjusted. Additionally, since students could potentially replace lowered Direct Loan amounts with private loan debt, keeping their debt

amount constant, it would be impossible to precisely lower D/E rates by lowering limits on title IV, HEA borrowing alone.

Changes: None.

Comments: One commenter suggested that the GE accountability metrics be paired with further reporting requirements but not tied to title IV, HEA eligibility. Another commenter recommended removing all references to the GE rule in the context of financial responsibility, administrative capability, and certification procedures, broadening the GE rule for uniform application across all program types.

Discussion: As further discussed in this document and in the NPRM,¹⁹³ we believe that for GE programs, further steps beyond information provisions are necessary and appropriate. The Department intends to integrate the GE accountability metrics into all relevant aspects of Federal student aid administration covered by the final rule.

Changes: None.

Timeframe for Warnings and Ineligibility

Comments: Several commenters suggested extending the timeframe for loss of title IV, HEA eligibility to failing in three out of any four consecutive award years for which metrics are calculated, with one of the commenters positing that allowing an additional year would limit loss of eligibility to programs truly demonstrating a pattern of poor performance versus merely experiencing a market shift or other unforeseen event. This commenter additionally suggested granting waiver authority to the Secretary for any program training students to be essential workers, for programs training students to enter professions experiencing critical national job shortages, or as a result of a national, State, or local emergency declared by the appropriate authority. Another commenter similarly suggested changing the provision for loss of eligibility to three consecutive fails.

Discussion: In the balance between gathering meaningful data and acting quickly enough to protect students and taxpayers from failing programs, an unavoidable amount of delay is already added to the rate and threshold calculation process for the time it takes for the data used in calculations to become available. The Department believes that allowing an additional year of failing GE metrics before a program becomes ineligible for title IV, HEA program participation would add too much risk for students in failing GE

programs. We further note that the accountability framework already accounts for sudden market shifts in that a GE program will not lose eligibility based on failing the D/E rates or EP measure for a single year. Waiving ineligibility for GE programs designed to train students to be essential workers or to work in fields experiencing labor shortages could especially fall short of protecting students—if program graduates do not have sufficient earnings when the field is at peak demand, those students will be at an even greater disadvantage if demand goes down.

Changes: None.

Comments: One commenter mentioned that closures with little notice to students are already problematic. This commenter voiced concern that the rule as proposed will cause still more schools to close within two years.

Discussion: Under the GE accountability framework, institutions are required to issue warnings when a GE program is at risk of becoming title IV, HEA ineligible based on the next calculation of D/E rates or earnings premium measure. This would occur if the GE program had a failing D/E rate within its last two rate calculations or if the program failed the earnings threshold within the last two measurements. We believe these warnings will provide students adequate notice and information to decide how they wish to proceed.

Changes: None.

Comments: One commenter opined that if a GE program did not have metrics calculated for two years, the programmatic eligibility clock should restart, citing that programs and their students are continually evolving and that most community college GE programs will be one year or shorter in length, making a cumulative evaluation period that could last up to four years not a reasonable period.

Discussion: The Department acknowledges that programs and student populations may evolve over time at any institution, but this does not negate the importance of using the best available data to hold programs accountable for student outcomes.

Changes: None.

Period of Ineligibility and Substantially Similar New Programs

Comments: Several commenters expressed the opinion that an institution voluntarily discontinuing a program should not be penalized if it produces failing rates in its final years. Two of the commenters did not think it made sense to employ the three-year

block on title IV, HEA eligibility for new programs substantially similar to programs voluntarily discontinued either before or after D/E rates or earnings premium measures are issued but allow eligibility for re-established programs that are discontinued before the metrics go into effect. One of these commenters expressed that they understood the need to prevent schools from using voluntary discontinuation to evade consequences, but that they believed the same goals could be achieved by limiting the block to programs that already had at least one failing accountability metric. A few commenters expressed the belief that CIP codes sharing the first four digits varied too greatly to be substantially similar, citing examples from the allied health fields and the cosmetology and related personal grooming fields, and that use of the six-digit CIP level would be sufficient to prevent manipulation. One commenter stated that this approach is problematic for institutions that provide specialized instruction in a narrow field such as cosmetology. Another of these commenters believed that the 3-year period was arbitrary and that its use in the rule on cohort default rates was not sufficient justification. Another commenter believed that the rule as proposed will block an institution from winding down a program based on market changes and reintroducing an improved version for three years, even if the newer program is designed to be shorter, less expensive, and more attractive to employers.

Discussion: As one of the commenters noted, this provision is designed to prevent institutions from evading consequences for programs producing inadequate student outcomes by voluntarily discontinuing a program before it could lose eligibility based on D/E rates or the earnings premium. Along those same lines, the period of ineligibility for new programs with substantial similarity would prevent institutions from bringing back a program that is failing or at risk of failing under a similar CIP code with few changes. While 6-digit CIP codes within some 4-digit CIP categories may have some more variation than others, there are still sufficient common elements to programs within a 4-digit CIP category to raise concerns that an institution with one failing program within the category should wait and reassess elements such as program design and market demand before establishing a new eligible program within the same category. The Department considers three years to be an appropriate waiting period. The

¹⁹³ 88 FR 32342.

Department selected a three-year period of ineligibility because it most closely aligns with the ineligibility period associated with failing the Cohort Default Rate, which is the Department's longstanding primary outcomes-based accountability metric at the institutional level. Under those requirements, an institution that becomes ineligible for title IV, HEA support due to high default rates cannot reapply for approximately three award years.

Changes: None.

Comments: One commenter suggested not imposing the three-year period of ineligibility for programs that have lost eligibility and allowing schools to reintroduce their programs redesigned to meet GE standards.

Discussion: The Department believes that omitting the period of ineligibility would provide inadequate protection for students against a program being quickly re-established with the same elements that led to its loss of eligibility in the first place. Since it would require several years of more data before debt and earnings outcomes could be determined for the "new" program, this would subject student futures to an unacceptable level of risk.

Changes: None.

Comments: One commenter suggested disregarding any fail rating more than four years old, providing an illustrative example of how under the rule as proposed in § 668.602(c) and (e), a program only large enough to receive rates in certain years could have failing rates in years one and seven and maintain eligibility (since the older rate would be disregarded under § 668.602(c) because the program had four or more consecutive award years without rates), while if the program had a passing rate in the interval, with failing rates in years one and seven and a passing rate in year four, it would lose eligibility for failing in two of the three consecutive years for which rates were calculated.

Discussion: The Department thanks the commenter for pointing out the potential for this unintended consequence. The Department agrees that the situation described by the commenter is undesirable. This provision of the rule is meant to avoid using measures of program performance too far in the past to determine program eligibility.

Changes: In response, we have modified this provision in § 668.602(c) and (e) to state that in determining a program's eligibility, the Secretary will disregard any D/E or EP measure that was calculated more than five years prior.

Comments: One commenter voiced a concern that loss of title IV, HEA eligibility for massage therapy programs would have a ripple effect on the industry, requiring current massage therapists to take the time to train new entry-level students.

Discussion: The Department best serves students and taxpayers by regulating the use of title IV, HEA funds so they support students in attending programs that lead to adequate outcomes. If the occupational licensure structure in a State or locality permits a training path outside of institutions of higher education, that is beyond the Department's jurisdiction.

Changes: None.

Other Concerns Related to Program Ineligibility Under the GE Framework

Comments: One commenter expressed the opinion that it was unfair to make program eligibility determinations based on data from years preceding the effective date of the final rule.

Discussion: The HEA requirement that gainful employment programs prepare students for gainful employment in a recognized occupation predates any years for which data will be gathered for the GE accountability framework.

Changes: None.

Comments: One commenter expressed the opinion that these will be the strictest debt-to-earnings metrics to date, making it increasingly difficult for programs to remain eligible.

Discussion: The Department is committed to protecting student and taxpayer resources with strong accountability metrics and, as noted in the RIA, we expect that most programs will pass the D/E rates metric.

Changes: None.

Challenges, Hearings, and Appeals

Comments: One commenter supported the Department's proposal in § 668.603 to provide an opportunity for institutions to appeal a determination that a program fails the D/E test on the grounds that the Department made an error in calculating the institution's D/E ratio. The commenter offered that this provision provides important due process protections to institutions.

In contrast, many commenters objected to the Department's decision not to include review, challenge, and appeal opportunities in the proposed rule that were present in the 2014 Prior Rule, primarily on the grounds of due process and fairness. These commenters maintained that the Department cannot reasonably remove the eligibility of a program, potentially resulting in the closure of an institution, based on calculations derived from certain data

without providing institutions a mechanism to review or challenge the data and offer other evidence, as well as appeal D/E and EP outcomes.

Referencing language from the preamble to the notice of proposed rulemaking for the 2014 Prior Rule, in which the Department stated that "[t]he proposed regulations are intended to provide institutions, in the interest of fairness and due process, with an adequate opportunity to challenge the completion, withdrawal, and repayment rates and median loan debt determined by the Department,"¹⁹⁴ one commenter asserted that the Department is not adhering to its previously acknowledged standard of due process. That commenter, as well as others, noted that the 2014 Prior Rule afforded institutions the opportunity to review and correct the list of students (with the Secretary determining in consideration of evidence submitted, whether to accept those corrections), challenge the accuracy of the loan debt information that the Secretary used to calculate the median loan debt for the program, and file an alternate earnings appeal to request recalculation of a failing or "zone" program's most recent final D/E rates using earnings data obtained from an institutional survey or State-sponsored data system. These commenters objected that the proposed rule does not offer those provisions, allowing only for provision of the student list to institutions (assertedly without the opportunity for review or correction) and an appeal where the Secretary has initiated a termination action of program eligibility under subpart G of part 668 (Student Assistance General Provisions).

Discussion: The Department thanks the commenter who wrote in support of the appeal provisions in § 668.603. At the same time, we disagree with the commenters who asserted that the Department must include the same opportunities for appeals and challenges as those contained in the 2014 Prior Rule to afford institutions due process or fairness. We do not believe the appeal procedures urged by the commenters are required by the Due Process Clause of the Fifth Amendment or any applicable principle of fairness.

The threshold question for procedural due process purposes is whether a person has been or will be deprived of a property interest protected by the U.S. Constitution.¹⁹⁵ But institutions lack

¹⁹⁴ 79 FR 16426, 16485 (Mar. 25, 2014).

¹⁹⁵ See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569 (1972); see also *Assoc. of Private Colleges and Universities v. Duncan*, 870 F. Supp.

such a protected interest in continued eligibility to participate in Federal student aid programs.¹⁹⁶ A unilateral expectation of benefits is insufficient, and institutions are neither promised nor led to believe that they will receive a continuing stream of Federal support without change in student aid rules.¹⁹⁷ In the context of title IV, HEA and GE programs, institutions and programs must satisfy a number of requirements for eligibility beyond the GE metrics in this rule, including standards related to administrative capability and financial responsibility. Moreover, neither institutions nor programs are direct beneficiaries of title IV, HEA aid to students. With respect to the GE accountability metrics, what will be at issue is specific program-level eligibility for Government support, not whether the institution and the other educational programs it offers may continue to participate in the Federal student aid programs. That indirect relationship to the benefit further weakens claims that institutions have a legitimate entitlement to continuing support from the Federal Government under title IV, HEA.¹⁹⁸

Additionally, the final rule's appeal process is fair. The risk of error is low in the first place because the Department will use quality data on earnings from a Federal agency combined with other reliable information, including information supplied by institutions themselves. We have explained those choices at length in the NPRM and in this document. The calculations in question, moreover, are not fairly subject to open-ended debate or significant discretion. Regarding GE program accountability, the rules for calculating D/E and EP results specify clear formulas, thereby diminishing the value of additional procedures. On the flipside, and in view of the Department's experience with appeals

under prior GE rules, we are convinced that adding such procedures will not improve decisions but will increase delays, expenditures, and other burdens. The rules will give adequate assurance of accurate decisions, while serving the Department's important interests in supporting career training that results in enhanced earnings and affordable debt.

Although the Department concluded that the alternate earnings appeals available under the 2014 Prior Rule were not effective, these rules will provide appeals that are meaningful and manageable. Section 668.603(b) states that if the Secretary terminates a program's eligibility, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. Subpart G of part 668, specifically § 668.86(b), outlines the procedure for institutions to challenge decisions to limit or terminate a program. These procedures are designed to provide an opportunity to correct any errors in the calculation of a program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. These procedures include issuance by a designated Department official of notice informing the institution of the intent to limit or terminate that institution's participation, through a possible appeal of the initial decision of the hearing official to the Secretary. In addition, under § 668.405, institutions will be provided a "completer list" of all students who completed each program during the cohort period and given an opportunity to correct the information about students on the list.

It is true that, unlike the 2014 Prior Rule, the rules adopted here will not allow for institution-by-institution challenges to draft D/E rates based on evidence provided by the institution that loan debt information used to calculate the median loan debt for a program is incorrect. However, median loan debt for a program is not a statistic that the Department creates on its own, but rather is derived from student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, title IV, HEA. We expect that institutions will review these data and confirm they are correct at the time of reporting. Should any reported data contain inaccuracies, the institution must timely correct that data. The Department provides ample opportunity for an institution to evaluate the accuracy of its data through

reconciliation and closeout procedures at the end of each award year. Section 668.405 will require that, in accordance with procedures established by the Secretary, the institution update or otherwise correct any reported data no later than 60 days after the end of an award year. Inasmuch as participating institutions have access in real time to Department systems through which relevant data are reported—that is, COD and NSLDS—plus an appropriate period of time to correct any erroneous data, the presumption of accuracy with respect to such institution-provided information is fair and reasonable. Accordingly, these regulations do not establish a protocol for the publication of draft rates and an institutional challenge to those rates based on incorrect data being used to calculate median loan debt.

We acknowledge the references to fairness and due process in the preamble of the Department's 2014 Prior Rule. We remain committed to making decisions based on sufficiently reliable information that is relevant to the GE program accountability framework. We disagree, however, that due process or fairness requires the Department to adopt precisely the same appeals processes as in 2014, regardless of current circumstances and other rules that affect the reliability of the information needed to apply these rules. To the extent that constitutionally protected interests are implicated when institutions seek to benefit from government support, we observe that due process remains a flexible concept that accounts for considerations that include a relatively low probability of significant error and the Government's interest in reducing fiscal and administrative burdens.¹⁹⁹

As explained above, institutions with programs that are not eligible to participate in title IV, HEA as the result of failing GE rates can appeal under subpart G of part 668 if they believe the Secretary erred in the calculation of the program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. We also note that some commenters mischaracterized these rules in asserting that the Department will limit institutions to a review of completer lists without an opportunity to make appropriate corrections. As previously discussed, § 668.405 will allow institutions to correct information about students on the list. Median loan debt challenges also are discussed

2d 133, 154 n.7 (D.D.C. 2012) ("Without a property right in their participation in Title IV programs, schools cannot press a Fifth Amendment challenge to the regulation of those programs.").

¹⁹⁶ See *Ass'n of Accredited Cosmetology Sch. v. Alexander*, 979 F.2d 859, 864 (D.C. Cir. 1992); *Dumas v. Kipp*, 90 F.3d 386, 392 (9th Cir. 1996); *Ass'n of Proprietary Colleges v. Duncan*, 107 F. Supp. 3d 332, 348–52 (S.D.N.Y. 2015) (rejecting procedural due process challenges to the 2014 Prior Rule based on asserted interests in property and liberty); *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133, 154 n.7 (D.D.C. 2012) ("Without a property right in their participation in Title IV programs, schools cannot press a Fifth Amendment challenge to the regulation of those programs.").

¹⁹⁷ See *Ass'n of Accredited Cosmetology Sch. v. Alexander*, 979 F.2d at 864 (concluding that "schools have no 'vested right' to future eligibility to participate" in the Guaranteed Student Loan program).

¹⁹⁸ See *Dumas*, 90 F.3d at 392.

¹⁹⁹ See, for example, *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 347 (1976); see also *Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018) (reaffirming that due process is flexible).

above. Alternate earnings appeals are addressed in a separate discussion below.

Changes: None.

Comments: Several commenters, within the context of supporting the reintroduction of alternate earnings appeals, suggested the Department “cap” the number of programs at a given institution that can lose eligibility as a result of failing D/E rates or EP measures. One commenter broadly suggested a cap for the first year. However, commenters were not otherwise specific as to how such a cap might be applied.

Discussion: We are not convinced that a cap on the number of programs offered by a single institution that can lose eligibility is an appropriate or logical measure. Failing programs allowed to remain eligible as the result of such a cap would be no more successful than those that lost eligibility; however, institutions would still be able to enroll

students in those programs, subjecting them to the potential harm these regulations are designed to prevent. Restricting a cap to the first year that an institution is subject to program sanctions in no way mitigates these concerns.

Changes: None.

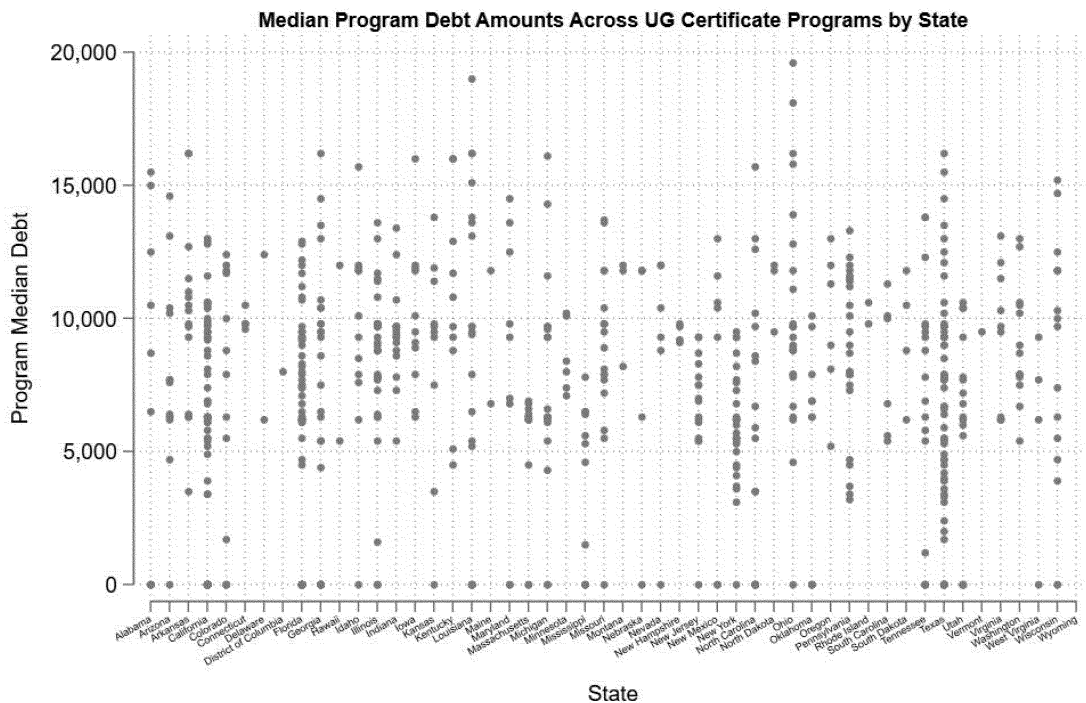
Comments: Some commenters claimed that cosmetology programs have limited ability to improve or reform because of State requirements for minimum hours and curriculum, restrictions on offering programs substantially similar to failing programs, costs of opening or expanding new programs, and limits to their ability to offer distance education.

Discussion: The commenters’ claim that State regulation prevents program improvement is not borne out by the data on the median debt of cosmetology programs within States. As Figure 1.4 shows, median debts for undergraduate certificate programs in cosmetology vary

widely within all States. In Figure 1.4, each dot represents the median debt of a program, grouped by the State where the program is located using data from the 2022 PPD described in the RIA. This variation suggests that institutions can and do influence the amount of borrowing their students acquire and can therefore improve their outcomes. At a minimum, such varying program results within States are inconsistent with the theory that State regulation tightly restricts opportunities for program improvement. Furthermore, we note that, on its face, the restriction on offering programs that are substantially similar to failing programs does not prevent institutions from improving their existing programs. Rather, it plainly is a safeguard against institutions relabeling failing programs under different CIP codes without actually improving them.

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Figure 1.4: Median Debt Levels Among Undergraduate Cosmetology Certificate Programs Across States



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Changes: None.

Comments: One commenter expressed the opinion that closures resulting from the absence of an appeal process will

result in beauty professionals having no options for schooling and the displacement of thousands of employees. Another commenter listed

negative effects that the COVID-19 pandemic had on the beauty industry, including the closure of salons and spas, the reluctance of clients to return, and

the difficulty service providers experienced in reestablishing clientele, all of which reduced earnings. The commenter inquired how programs can accurately be measured without an appeal process for this time period. Another commenter posited that return on investment (ROI) should not be the only standard by which the value of an educational program is measured, and that there is inherent value in professions that help people, such as social worker, counselor, hairstylist, or esthetician. The commenter asked that due process in the form of an appeal on that basis be offered in final regulations.

Discussion: Regarding concerns about loss of educational opportunity for those seeking to enter the beauty profession and possible displacement of persons employed in the industry, the Department does not intend either of those results. We accept the need for quality programs in the fields of cosmetology and esthetics, as well as people to train those entering these occupations. However, those views do not obviate the importance of program outcomes that indicate completers have a reasonable expectation of reported, verifiable earnings exceeding those of a high school graduate and sufficient to service their education debt. Nor do predicted results for a given field of training establish any shortfall in the rules' procedures. Although some programs will not be eligible for title IV, HEA participation as the result of repeatedly failing D/E rates or EP measures, we are not convinced that opportunities for students who want to train for a career in the beauty industry will be materially circumscribed by the implementation of these rules, including the provisions for appeals. Moreover, we believe that the increased confidence students will have in the economic advantages of enrolling in programs that do establish passing D/E rates and EP measures outweigh the drawbacks associated with no longer being able to choose from among those programs that are not eligible under these rules.

We acknowledge that the COVID-19 pandemic likely affected the earnings of workers in salons, spas, the beauty industry, and many other industries besides. However, we do not find a basis for offering special appeals to any one field of programs or more broadly. As explained elsewhere in this document, the Department is not postponing action until such time as no earnings data through 2022 is included in D/E rate or EP calculations. Accordingly, and in consideration of the fact that most industries employing the graduates of GE programs were, to some extent,

affected by the pandemic, permitting appeals based on this circumstance would effectively obviate the full effect of the rule until at least the 2026–2027 award year. We do not view the effects of the pandemic as being germane to the discussion of alternate earnings appeals.

We agree with the commenter who asserted that ROI is not the only standard by which the benefits of an education should be measured, and that professions that help people have value beyond any remuneration that can be expected. Elsewhere in this document and in the NPRM, we have affirmed that students rely on a variety of appropriate considerations in choosing among postsecondary education options and that postsecondary education programs may reflect and serve a range of values.²⁰⁰ However, having income sufficient to repay the debt incurred for a program is a commonsense and fundamental part of any assessment of whether the program prepares students for gainful employment in a recognized occupation. It is also reasonable in that assessment to expect that program graduates will, on average, earn more than a high school graduate. Last, we note that the GE program measures are not, strictly speaking, a determination of ROI, which is a formula for determining how well a particular investment has performed relative to others. As to the commenter's suggestion that the Department establish an appeal based on the extent to which a program's graduates help people or provide other societal benefits, we do not see how such an appeal could be anything other than entirely subjective and, therefore, lacking in fairness. Moreover, the suggestion seems to involve the commenter's preferred measures for program success, rather than statutory requirements or the adequacy of procedures used to determine program eligibility.

Changes: None.

Comments: Some commenters asserted that proposed § 668.603(b), which provides a basis for appeal if a program loses eligibility upon completion of a termination action of program eligibility, is a misapplication of the regulations applicable to limitation, suspension, and termination actions under subpart G, while still failing to give institutions adequate appeal rights. One commenter, while stressing the absence of challenges and appeals present in the 2014 Prior Rule and arguing for their reintroduction, noted that subpart G does provide institutions with notice and an

opportunity to request a hearing prior to suspension, limitation, or termination of that institution's participation in the title IV, HEA programs and that no limitation, suspension, or termination occurs until after the requested hearing is held. Alternatively, an institution may submit written materials to the designated Department official, who is required to consider the materials before determining whether to limit, suspend, or terminate participation. The commenter further offered that, even after an initial decision, regulations allow that an institution may appeal the initial decision to the Secretary. Citing proposed § 668.91(a)(3)(vi), which stated, "In a termination action against a GE program based upon the program's failure to meet the requirements in § 668.403 or § 668.404, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation," another commentor expressed concern that the provision improperly removes the official's discretion to make an eligibility determination based on the facts and circumstances before them. The commenter also contended that, because the rule requires the official to terminate a program's eligibility without the opportunity for presentation of the case before a hearing official, it violates the institution's due process rights. Other commenters expressed the opinion that limiting the basis for any appeal to a calculation error on the part of the Department unfairly denies institutions any opportunity to present data that are potentially more accurate than the data on which the Department based its calculations.

A number of commenters objected to the appeal process in subpart G being limited to fully certified institutions. Commenters acknowledged that procedural rights for provisionally certified institutions differ from those of fully certified institutions with respect to institutional eligibility but argued that (unlike for institutional eligibility) certification status has no bearing on program-level GE outcomes or the resulting eligibility status of those programs. The commenters further argued that inasmuch as fewer procedural protections would be accorded provisionally certified institutions and opportunities to challenge underlying data are absent, the proposed rules effectively create two separate sets of analysis for GE programs that share the same outcome.

Some commenters suggested the introduction of an appeal based on recalculating GE metrics using an eight-digit OPEID number. The commenters

²⁰⁰ See, for example, 88 FR 32300, 32306, 32322 (May 19, 2023).

offered that alternate results calculated at the eight-digit level would indicate where, despite failing across all locations (presumably at the six-digit CIP level), a program is passing in specific markets and locations, preventing those successful programs from becoming “collateral damage.” Commenters added that the more specific rates and related information would have greater relevance to students attending individual locations.

Discussion: We disagree with the commenters who asserted that the basis for appeal in § 668.603(b) is a misapplication of the regulations in subpart G of part 668 and applicable to fine, limitation, suspension, and termination proceedings. Under the rules adopted here, a GE program that has failed the D/E rates measure or the earnings premium measure in § 668.402 in two out of any three consecutive award years is ineligible and its participation in the title IV, HEA programs ends upon the earliest of the issuance of a new Eligibility and Certification Approval Report (ECAR) that does not include that program, completion of a termination action of program eligibility, or revocation of program eligibility, if the institution is provisionally certified. Nothing in the regulations applicable to termination proceedings limits the Department in taking such action in circumstances where a GE program has failed the D/E rates measure or EP measure. Accordingly, we do not believe that any part of proposed § 668.603(b) is inconsistent with the provisions of subpart G or constitutes a misapplication of its provisions.

We agree with the commenter who noted that in taking an action to terminate the eligibility of a failing program, the Department is bound by all of the provisions of subpart G related to due process—that is, delivery of notice to the institution with an opportunity to request a hearing, as well as the opportunity to submit written materials to the designated Department official, and, finally, the institution’s right to appeal the initial decision of the hearing officer to the Secretary. Section 668.91(a)(3)(vi) does, as noted by another commenter, require the hearing official to terminate the program’s eligibility unless they conclude that the Secretary erred in the applicable calculation. However, we do not agree with that commenter that this provision either removes the official’s discretion to make an eligibility determination based on the facts and circumstances before them or violates the institution’s due process rights by requiring the Department official to terminate a

program’s eligibility without the opportunity for presentation of the case before a hearing official.

Unlike with a similar action taken as the result of serious program violations, termination proceedings to end the participation of a failing GE program would be based solely on the regulatory loss of eligibility prescribed in § 668.603. Such loss of eligibility can only result from failing D/E rates or EP measures as objectively calculated using the formulas prescribed in §§ 668.403 and 668.404, respectively. Therefore, a conclusion by the hearing official that the Department erred in the applicable calculation is, appropriately, the only basis on which that individual may decline to terminate the program’s participation. However, within the context of determining whether errors were made in calculating the D/E rates or EP measures, the hearing official is not constrained when considering the facts and circumstances before them. It is also not the case that these rules will mandate that the Department official terminate a program’s eligibility without the opportunity for the institution to present its case before a hearing official. Under § 668.86(b)(1)(iii), the Department official must inform the institution that termination will not be effective on the date specified in the notice if the designated Department official receives from the institution by that date a request for a hearing.

Regarding the objections of some commenters that limiting the basis for any appeal to a calculation error on the part of the Department unfairly denies institutions any opportunity to present data that are potentially more accurate than the data on which the Department based its calculations, we have addressed the substance of that concern in the NPRM and we elaborate on due process concerns elsewhere in this document. Here we reiterate that, earnings data notwithstanding, the information used by the Department to calculate D/E rates is reported by institutions and presumed to be accurate. As discussed above, moreover, institutions are provided an opportunity to correct completer lists and to update or otherwise correct any reported data. Finally, we believe that the question of whether to identify programs based on the six-digit CIP, six-digit OPEID, or eight-digit OPEID is most appropriately addressed in the discussion of the definition of a GE program and not germane to a discussion of appeals. We address the substance of that suggestion elsewhere in this document.

Changes: None.

Comments: Addressing the provision in proposed § 668.405, allowing an

institution to update or otherwise correct any reported data no later than 60 days after the end of an award year, several commenters expressed confusion over and requested clarification from the Department on the required timeframe being tied to the end of an award year and suggested that the 60-day period be counted from the date the institution is provided with a completer list. An alternative offered by one commenter would bifurcate the process, giving institutions 60 days from the end of the award year to correct any self-reported data and an additional 60 days to respond to any subsequent completer list, the assumption being that the Department’s intent is that any 60-day correction period would begin at a point where the institution has access to all data subject to correction. Additionally, commenters asserted that any correction opportunity should also extend to data the Department collects itself, such as Direct Loan Program loan debt, and that institutions should also have the opportunity to identify students whom the Department failed to exclude from the completer list, provided the institution has reliable evidence that the students should be excluded.

Discussion: We agree with the commenter who expressed confusion over the proposed timeframe for updating or otherwise correcting any reported data and suggested separating that process and corrections to the completer list. As noted by the commenter, an institution cannot review the completer list until it is received, a date which may not coincide with the end date of the academic year. Because the composition of completer lists is based on student enrollment information reported to NSLDS, we are not persuaded of the need for a process whereby an institution would identify to the Department students it (the institution) believes should be excluded from the list. Upon receipt of a completer list, the institution should correct any inaccurate enrollment data reported to NSLDS. Accordingly, we have revised § 668.405(b)(1)(iii) to allow the institution 60 days from the date the Secretary provides the list to make necessary corrections to underlying enrollment data in NSLDS. Subsequently, the Department will presume that all such data is correct and proceed with calculating D/E rates measures and EP measures. In response to the commenter who asserted that any correction opportunity should extend to data the Department collects itself (e.g., Direct Loan Program loan debt), we note that median loan debt used in the D/E

calculation is derived from information the institution is required to report to the Department and provision for the correction of that data already exists in § 668.405(a).

Changes: Section 668.405(b)(1)(iii) is revised to allow the institution to correct underlying enrollment information reported to NSLDS about the students on the completer list no later than 60 days after the date the Secretary provides the list to the institution.

Comments: We received a large number of comments objecting to the Department's decision not to include an alternate earnings appeal in these rules. Several of these commenters characterized the absence of an earnings appeal as a retraction of assurances made by the Department in the 2014 Prior Rule to provide an opportunity for institutions to demonstrate that actual earnings for a failing program are higher than those on which D/E rates calculations were based. These commenters cited the 2014 Prior Rule NPRM where the Department, in addressing what was then proposed § 668.406, stated, "[w]e recognize that this process must provide an institution an adequate opportunity to present and have considered rebuttal evidence of the earnings data, and the alternate earnings appeal process provides that opportunity," and these commentators characterized the statement as evidence of a previous commitment to provide due process with respect to earnings that has been abrogated. Other commenters asserted that, inasmuch as a high potential for the underreporting of income to the IRS exists in "tipped" occupations and institutions have little or no control over whether graduates do report the portion of income derived from gratuities, it is unfair to predicate the loss of program eligibility on an incomplete earnings picture without providing an appeal based on earnings surveys such as existed in the 2014 Prior Rule. Still other commenters suggested the Department's stipulation in the preamble to the NPRM that earnings data obtained from the IRS contains "statistical noise" constitutes an admission that data are potentially flawed, further arguing the need for an earnings appeal process.

Many of the commenters writing in opposition to the lack of an earnings appeal objected to the Department's assertion (in the NPRM) that alternate earnings data for cosmetology schools filed under the previous earnings appeal (as permitted in the 2014 Prior Rule) were "implausibly high." This statement was characterized by one commenter as implying that

cosmetology schools altered or manipulated earnings data obtained from surveys to ensure D/E rates passed upon appeal. A few commenters questioned the Department's position expressed in the NPRM that it is unlikely any earnings appeal process would generate a better estimate of graduates' median earnings. One of those commenters offered that whether the alternate earnings appeal process would frequently change the estimate of median earnings at issue is irrelevant to whether the Department is providing institutions with due process as required by the Constitution. Another commenter added that the Department's conclusions regarding the likely merit of such appeals are based on a single round of alternate earnings appeals in which only institutions offering GE programs participated. Yet another commenter rejected the Department's assertion that, to date, it has identified no other data source that could be expected to yield data of higher quality and reliability than the data available from the IRS, inquiring why the Department asks for flexibility in seeking a source for earnings data, why any other source would be considered, and how the availability of appeals might be affected should the Department opt for an alternate source that is more available but less reliable.

Some commenters questioned the Department's lack of confidence in the results of earnings surveys, in view of the 2014 regulations then in effect requiring an attestation from the institution's chief operating officer, as well as an examination-level attestation engagement report prepared by an independent public accountant or independent government auditor that the survey was conducted in accordance with NCES. One commenter asked whether the Department has considered that perhaps the reported Social Security Administration (SSA) earnings data might be the data set that is suspect. Two more commenters related the success their respective institutions had in mounting successful alternate earnings appeals, with one example offered where average reported income was 65.5 percent higher than reported SSA earnings. Both commenters expressed confidence that the surveys were conducted in full compliance with applicable standards and produced accurate results. Finally, two commenters disputed the notion that an appeal process creates adverse incentives for programs to encourage underreporting, inasmuch as institutions do not instruct students on how to complete their taxes. These

commenters also expressed the opinion that there would be no benefit in encouraging students to underreport their income since graduates' underreporting of tip and other income will always harm an institution that is subject to the GE rule.

These commenters contended that, despite expressing serious misgivings as to the veracity of earnings surveys, the Department presented no evidence of wrongdoing or overstating of income and displayed an unwarranted bias against the appeal process. One commenter summarized the Department's arguments as largely tracking those that were rejected by the district court in *American Association of Cosmetology Schools v. DeVos* (AACS).²⁰¹ Commenters further criticized the Department's reference to the administrative burden resulting from the appeals structure under the 2014 Prior Rule, opining that easing burden on the Department is not a legitimate reason for denying institutions recourse to an earnings appeal as an essential part of ensuring due process.

Various commenters claimed that the decision of the district court in AACS constitutes an implied or even express mandate for the Department to offer an earnings appeal. Citing the court's conclusion regarding arbitrariness in making rebuttals of reported income data overly difficult, the commenters asserted that rather than modifying the alternate earnings appeal process to comply with the court's decision, the Department has proposed rules that ignore the court. One commenter added that the court ordered that the Department remove barriers to the appeal process in order to uphold the legality of the rule and, in doing so, signaled that it found value in the appeal process as an alternative means of measuring earnings data that was responsive to the problem but was constructed in a manner that was infeasible for certain programs to utilize the appeal.

Several of the commenters argued that the Department must, out of consideration for the district court's decision, principles of fairness, or both, restore the alternate earnings appeal contained in the 2014 Prior Rule (as modified by the court's order in AACS), or conduct a study of reasonable solutions for addressing the unreliability of reported earnings resulting from underreporting of tipped wages, independent employment tax treatment affecting net income, racial and gender wage discrimination, and

²⁰¹ 258 F. Supp. 3d 50 (D.D.C. 2017).

other factors that may have a bearing on program graduates. One commenter offered that, while the district judge in the AACCS case found that the specific earnings appeal mechanism in the prior rule was unworkable, it might be modified to comply with the law. The commenter suggested that the Department could use an earnings appeal that required schools to submit a statistically significant number of responders to the appeal cohort as opposed to requiring a 100-percent response rate, adding that changes such as this would allow for schools to have appropriate due process rights under the GE Rule.

Discussion: The Department shares the commitment to using reliable earnings data for the D/E and EP metrics, as expressed by many commenters. But the Department disagrees that relatively open-ended earnings appeals are the appropriate and sensible, let alone legally required, means of achieving that goal. We reach that conclusion for several reasons, many of them recounted in the NPRM. Among them are the Department's experience with earnings appeals after the 2014 Prior Rule went into effect, and the particular features of the rules that we adopt here. With the benefit of experience, other developments since 2014, and the inclusion in these rules of various safeguards against significantly inaccurate or underestimated completer earnings, we have concluded that alternate earnings appeals of the kind the commenters suggested would be unreasonable if not arbitrary. We have likewise concluded that those appeals are not mandated by the Due Process Clause of the Fifth Amendment.

We disagree, first of all, with suggestions that the Department's 2014 Prior Rule locked in a position on appeals today. We repeat that agencies may lawfully alter positions based on nonarbitrary grounds, which we supplied in the NPRM and further address in this document. Furthermore, we observe that the commenters who referenced the preamble to the 2014 Prior Rule NPRM do not appear to support the rules on earnings appeals that were proposed and adopted in 2014. Those provisions limited alternate earnings appeals to complaints that were supported by a State-sponsored earnings database or an earnings survey conducted in accordance with certain requirements established by NCES.²⁰² Based on information that was available to the Department in 2014, and to adequately assure the reliability of

results and fairness to all concerned, the Department favored a controlled form of alternate earnings appeals. Some commenters refer us back to 2014 but without endorsing the rules that were adopted then, and apparently without accepting that the Department may consider developments since then. We are not persuaded by those positions.

In any event, the reasons for alternate earnings appeals do not hold as they did in 2014. We have explained the Department's position in this document and in the NPRM. Now-familiar arguments about unreported income have become less persuasive based on further review and a number of considerations including: current Federal requirements for the accurate reporting of income and increased use of electronic transactions, which makes underreporting income more difficult; the fact that IRS income data are used without adjustment for determining student and family incomes for purposes of establishing student title IV, HEA eligibility, and determining loan payments under income-driven repayment plans; the relatively low quality of past data submitted by institutions in alternate earnings appeals, including submissions after litigation over the 2014 Prior Rule, along with the problems associated with processing those appeals; and new research on unreported income. We reiterate as well that we designed the metrics to be commonsense and modest standards of enhanced earnings and affordable debt, and that a GE program will have to fail the D/E or EP metric multiple times before the program is ineligible to participate in the title IV, HEA programs. Therefore, GE programs that are ineligible based on their repeated failure to meet the metrics will not be on the margin in a substantive sense, but instead will be demonstrably unable to satisfy modest expectations with a built-in margin for error. Moreover, compared to the 2014 Prior Rule, these rules allow additional time for program completers to establish earnings—effectively increasing program-level calculated earnings far beyond any estimated effects of statistical noise in privacy-protected data, and providing further assurance that programs will not inadvertently fail the D/E rates measure or the EP measure. As a result of the Department's thorough review and in light of the particular features of these rules, we conclude that it is neither necessary nor appropriate to include a similar alternate earnings appeal process. We respect the objections offered by

commenters, but we are not persuaded to alter this position.

Regarding the argument made by some commenters that it would be unfair to determine program eligibility unless institutions may submit earnings surveys, again we refer to preamble language from the 2023 NPRM. There we explained that, to date, the Department has identified no other earnings data source that could be expected to yield higher quality and reliability than the data available to the Department from the IRS. We believe that alternative sources of earnings data such as graduate earnings surveys would be more prone to issues such as low or selective (*i.e.*, only higher earners are sampled, or are differentially likely to respond) response rates and inaccurate reporting, could more easily be manipulated to mask poor program outcomes, and would impose significant administrative burden on institutions, not only the Department. We add here that, in adopting these rules, the Department need not quantify the prevalence of self-interested or bad-faith earnings estimates. Inaccurate and unreliable earnings information in appeals is problematic whatever the explanations for its low quality. Furthermore, we lack a reasonable basis to conclude that subsets of institutions are likely to produce especially reliable or unreliable surveys on earnings. We, therefore, disagree with the commenter who suggested the Department's past experience with earnings appeals is irrelevant to evaluating rules that cover a different set of institutions compared to the 2014 Prior Rule. As to the influence of institutions on the degree of compliance exercised by their graduates with IRS reporting rules, that too is difficult to quantify with precision. But we offer our continued and logical belief that the potential influence of institutions on the ethical and lawful behavior of the students they educate is not insignificant. Regardless, we repeat that we do not believe that taxpayer-supported educational programs should effectively receive credit for earnings that their graduates fail to report.

Moreover, we have thoroughly considered the issue of statistical noise in IRS earnings data. As explained in the NPRM, we understand that the IRS would use a privacy-protective algorithm to add a small amount of statistical noise to its estimates before providing median earnings information to the Department. The Department recognizes this creates a small risk of inaccurate determinations, in both directions, including a very small likelihood that a failing program could have passed if its unadjusted median

²⁰² Formerly 34 CFR 668.406(b) through (d) (rescinded).

earnings data were used in calculating either D/E rates or the earnings premium. Using data on the distribution of noise in the IRS earnings figures used in the College Scorecard, however, we have estimated that the probability that a program could be erroneously declared ineligible (that is, fail in 2 of 3 years using adjusted data when unadjusted data would result in failure for 0 years or 1 year) is itself very small—less than 1 percent.

Assuming that such statistical noise would be introduced, the Department plans to counteract this already small risk of improper classification in several ways. First, we include a minimum n-size threshold as discussed under § 668.403 to avoid providing median earnings information for smaller cohorts, where statistical noise would have a greater impact on the earnings measure. The n-size threshold will effectively cap the influence of the noise on D/E and EP results. In addition, a program is not ineligible under the GE program accountability rules until that GE program fails the accountability measures multiple times. Furthermore, the rules will establish an earnings calculation methodology that is more generous to title IV, HEA supported programs than what the Department adopted in the 2014 Prior Rule for GE programs. The rules will measure the earnings of program completers approximately one year later (relative to when they complete their credential) than under the 2014 Prior Rule. This will yield substantially higher measured program earnings than under the Department's previous methodology—on the order of \$4,000 (about 20 percent) higher for GE programs with earnings between \$20,000 and \$30,000, which are the programs most at risk for failing the earnings premium threshold. This will be more generous to programs under both the EP and D/E metrics because the higher measured program earnings will be used in both calculations. The increase in earnings from this later measurement of income will provide a buffer more than sufficient to counter possible error introduced by statistical noise added by the IRS. Together, these features of the rules safeguard against artificially low earnings results, and they do not suggest the need for further measures such as an earnings appeal process that would rely on survey earnings far less reliable than those provided by the IRS.

Although the Department currently prefers to rely on IRS earnings data, the rules also will allow the Department to obtain earnings data from another Federal agency if unforeseen circumstances arise. That provision of

the rules will give the Department flexibility to work with another Federal agency to secure data of adequate quality and in a form that adequately protects the privacy of individual graduates. Despite suggestions by one commenter, the flexibility to use other data is no indication that the Department will use inferior data that are insufficiently accurate and reliable for purposes of these rules. We have confidence in the accuracy and reliability of all Federal agency sources under consideration. In any case, the Department's NPRM informed the public about the kind of data needed for the rules, as well as the sources from which those data might be drawn.

In response to those commenters who viewed as pejorative the Department's assertion that alternate earnings data for cosmetology schools filed under the 2014 Prior Rule were implausibly high, we intended no offense. This statement does not seek to imply that cosmetology schools altered or manipulated earnings data obtained from surveys to inflate D/E rates as to pass upon appeal. Rather, we sought to convey our misgivings over what appeared to have been an excessive amount of earnings reported by survey respondents. This may have resulted from a number of factors that are difficult to control when using such surveys. Those challenges in producing accurate and reliable survey results on completer earnings are not special to cosmetology schools.

Moreover, we disagree with some commenters' suggestions that infrequency of errors under the rules and administrative burdens from the alternatives that the commenters prefer are irrelevant to the Due Process Clause. Those assertions are incorrect. To the extent that constitutionally protected interests are even implicated when institutions seek to benefit from government support, we reiterate that due process remains a flexible concept that accounts for considerations that include a relatively low probability of significant error and the Government's interest in reducing fiscal and administrative burdens.²⁰³ We likewise disagree that the Department's experience with alternate earnings appeals is somehow irrelevant or inadequate to provide support for these rules. Those appeals were received and analyzed over an extended period of time during which the Department compiled more than sufficient data to show that the process contained serious flaws and failed to yield adequately reliable earnings data. The Department

has no evidence to suggest that subsequent rounds of earnings appeals would have resolved the Department's misgivings about the accuracy and reliability of earnings data obtained through the use of earnings surveys, or about the various costs to all concerned in operating that process.

We also disagree with the other arguments that commenters raised for creating an earnings appeal in these rules. The 2014 Prior Rule did allow for institution-sponsored surveys that met National Center for Education Statistics (NCES) standards. However, adherence to NCES standards in this context, even when confirmed by an examination-level attestation engagement report prepared by an independent auditor, does not mitigate the potential for misreporting of earnings by program graduates participating in the earnings survey. There are inherent biases for survey respondents to inflate their earnings and little incentive for institutions to encourage accurate survey responses. Additionally, the amounts reported on such instruments cannot be substantiated in any other way than to accept at face value the information supplied by a survey respondent. The Department's reservations about the use of earnings data surveys are already addressed above and discussed at greater length in the 2023 NPRM. As for whether the SSA earnings data used under the 2014 Prior Rule were "suspect," we are aware of no evidence to suggest that was the case. We do not imply that the commenters who related their own success in alternate earnings appeals under the 2014 Prior Rule were noncompliant with NCES standards. Again, however, the degree to which any earnings survey was conducted in accordance with those standards is not responsive to the Department's reservations, given experience and new evidence, about the use of earnings data obtained in that way for calculating D/E rates and the EP metric.

In response to the commenters who maintained that institutions do not instruct students on how to complete their taxes, we have not suggested that institutions regularly offer students tax advice. In addition, we have concluded that the available evidence, taken as a whole, indicates that underreporting is modest in size for graduates of GE programs and other programs that are eligible to participate in the title IV, HEA programs. We do, however, believe that adding an earnings appeal process that is aimed at capturing unreported income could encourage a culture of underreporting. The practical concern is that a significant fraction of tax-

²⁰³ We further address due process in an above discussion of "Challenges, Hearings, and Appeals."

supported programs may produce completers who do not report substantially all of their income to the Government at the front end, but that, at the back end, those programs will remain eligible for title IV, HEA support through institution-sponsored earnings surveys in which responses are costless to program completers. And in response to the commenters who asserted that there is no direct and immediate benefit that accrues to institutions when students underreport their income, the extent to which such practices will affect institutions through GE program accountability metrics would certainly be affected by earnings appeals that allow institutions to pitch estimates of income that has not been reported to the IRS as required by law. Finally, regarding evidence of wrongdoing or overstating of income intentionally by institutions, we repeat that, in adopting these rules, the Department need not quantify the prevalence of self-interested or bad-faith earnings estimates. Inaccurate and unreliable earnings information in appeals is problematic whatever the explanations for its low quality. With respect to institution-sponsored surveys, earnings estimates are entirely reflective of whatever figures respondents choose to report, unverifiable, and subject to several biases for which there are not adequate controls. Self-reported earnings on surveys are not an appropriate substitute for substantiated earnings reported to the IRS or another Federal agency with earnings data of comparable quality. Indeed, most research into the extent of misreporting of incomes in surveys take administrative data, including that provided to the IRS or SSA using the same information reports (W2 forms and schedule SE) we rely on to measure program graduates' earnings, as the "ground truth" with which to compare survey reported earnings.²⁰⁴

The Department disagrees with the commenters who argued that the decision of the district court in *American Association of Cosmetology Schools v. DeVos*,²⁰⁵ which addressed the 2014 Prior Rule, mandates that the Department offer an alternate earnings appeal in this final rule. There the district court rejected in part and accepted in part certain arbitrariness challenges to the 2014 Prior Rule. The court held that the Department had adequately explained why SSA earnings

data were used and without an adjustment factor for unreported income,²⁰⁶ but the court also held that the Department had not justified certain limits on alternate earnings appeals. The court referred to evidence of unreported income in the 2014 rulemaking proceedings,²⁰⁷ and the court examined the Department's reasoning, focusing on then-current law regarding income reporting and on the earnings appeals in the 2014 Rule. In reviewing the prior rule's limits on those appeals, the court stated that the Department had not explained its assumptions.²⁰⁸ The court ultimately ordered that AACS member schools be allowed to pursue earnings appeals without meeting the numerical survey requirements in the rule.²⁰⁹ The court did observe that the notice-and-comment process failed to identify better data or a better methodology for calculating earnings for program completers, but, in fashioning a remedy, the court believed that each school should be allowed to offer something better, if it existed, during an appeal.²¹⁰

The Department followed the district court's opinion when the 2014 Prior Rule was in effect. The opportunity to submit a Notice of Intent to Appeal was re-opened and institutions were permitted to submit alternate earnings

appeals for programs with overall "zone" or fail ratings regardless of whether the 50 percent minimum response rate or 30-response minimum were met, with the Department agreeing to review the earnings appeals on a case-by-case basis. Indeed, the Department allowed these case-by-case earnings appeals for all institutions, not only AACS members. And we have taken care to examine the court's opinion again during this rulemaking. We understand the concerns expressed in the opinion, as well as the hope for a workable even if open-ended earnings appeals process, given the record evidence that was available and the reasoning in the 2014 rulemaking proceedings. We appreciate as well that the court expressed concern for administrability.²¹¹ Of course, the district court's evaluation of the reasoning in the 2014 Prior Rule does not bind the Department in a subsequent rulemaking that considers new and different information, relies on a different set of reasons, and produces different final rules. Nonetheless, the Department has been mindful of the district court's review of the 2014 Prior Rule.

In this document and the accompanying NPRM, we have explained at length our rationale for relying on a Federal agency with earnings data as a source of reliable, verifiable, and accurate earnings information to use in the calculation of debt-to-earnings rates and the earnings premium. We have similarly explained the Department's decision not to include an alternate earnings appeal in this final rule. The Department's position here is not based on unexplained assumptions about tax law compliance or the value of certain survey response rates. Instead our conclusions are based on considerations such as new data on unreported income that indicate its modest size for the program graduates who are relevant to this rule; new laws on reported income and the increased use of electronic payments expected to further reduce underreporting; a longer earnings period in these rules that safeguards against programs failing the D/E or EP metrics in ways that concern various commenters; the use of reported income in other Department operations as well as the problematic incentives arising from crediting programs with unreported income; and the

²⁰⁶ See *id.* at 75–76. We note here our disagreement with commentators' recommendations that the Department study the issue of unreported earnings even further, given our examination of the issue during this negotiated rulemaking process and the available research. See generally *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1160 (2021) ("In the absence of additional data from commenters, the FCC made a reasonable predictive judgment based on the evidence it had."); *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 539 (D.C. Cir. 2020) ("The Secretary . . . is not limited to relying only on definitive evidence. . . ."). We observe in this regard that the AACS district court concluded that the Department was not responsible for collecting earnings data on individual programs, see 258 F. Supp. 3d at 75 n.8, and the court indicated that the Department had no obligation to conduct independent studies under the applicable standard for use of data, see *id.* (quoting *Siv. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000)). See also *Prometheus Radio*, 141 S. Ct. at 1160 ("The [Administrative Procedure Act] imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies."); *District Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 56, 61 (D.C. Cir. 2015) (addressing standards for agency data use, and indicating that a dataset on which an agency relies need not be perfect).

²⁰⁷ Above in "Tipped Income," we address such evidence of unreported earnings along with more recent findings.

²⁰⁸ See 258 F. Supp. 3d at 74 (discussing the prior rule's numerical response-rate requirements for earnings data from State-sponsored data systems and from institution-sponsored surveys).

²⁰⁹ See *id.* at 76–77 (severing part of the 2014 appeals rule from the remainder of the 2014 Prior Rule, and stating that the Department "will be able to decide, on a case-by-case basis, what modicum of evidence is enough").

²¹⁰ See *id.* at 63.

²⁰⁴ See for example, Bollinger, Hirsch, Hokayem & Ziliak (2019). Trouble in the Tails? What We Know about Earnings Nonresponse Thirty Years after Lillard, Smith, and Welch. *Journal of Political Economy*, 127(5).

²⁰⁵ 258 F. Supp. 3d 50 (D.D.C. 2017).

²¹¹ See *id.* at 73 ("[T]he [Department] has discretion to sacrifice some measure of fit for the sake of administrability."); *id.* at 74 ("Nor did the commenters propose an alternative calculus to balance fit and administrability.").

Department's hard-earned experience in conducting open-ended appeals and processing the surveys and other information that was submitted. The Department has concluded that AACCS's previous estimates of up to 60 percent unreported income in that case were far too high to be plausible, are even less indicative of actual earnings under current circumstances, and are not a reasonable basis for adding earnings appeals now.²¹² That is not the quality of evidence on which the Department could rationally and fairly supersede earnings data from IRS or another Federal agency, nor should programs receive credit for such evidence of unreported earnings. Moreover, earnings appeals under the 2014 Rule were not only difficult to administer and burdensome for all involved but also, and crucially, they yielded low-value information overall. The district court in AACCS could not have been aware of these developments when it evaluated the 2014 Prior Rule, and the Department's decision today obviously is no indication of disregard for the court. To the contrary, the Department's decisions in this final rule are importantly based on subsequent developments and insight gained from following the district court's judgment.

Changes: None.

Program Application Requirements

Comments: One commenter voiced concern about certain portions of the requirements under § 600.21(a)(11) to update application information for GE programs. They described the difficulty of knowing when a change is considered to occur for the 10-day requirement to begin, citing lengthy approval processes sometimes involving a State and accrediting agency in addition to institutional academic governance structures. They also voiced concern at whether even potentially minor changes, such as a one-credit change in program length, or a minor change in words in a program name, would trigger reporting requirements. They recommended extending the reporting period to 30 or 60 days, and that we clarify that we require updates only for substantive items relative to program eligibility and misrepresentation, not to minor clerical changes not fundamental to eligibility.

Discussion: The 10-day period for reporting changes is consistent with the 10-day period for changes to GE programs institutions are currently required to report, as well as other eligibility changes (e.g., change in

institutional officials, change of address, etc.), and the Department believes that it is an appropriate reporting period. Changes to a GE program name were already reportable changes under § 600.21(a)(11)(v).

Changes: None.

Comments: One commenter sought to draw our attention to an inconsistency between the communicated intent in the preambulatory section to add a conforming change to acknowledge § 668.603 limitations on adding new programs and re-establishing programs after a loss in eligibility versus the language in proposed § 600.10(c)(1)(v), which would have required institutions to obtain Department approval before establishing or re-establishing any of these programs. They suggested repositioning that provision outside of § 600.10(c)(1) to correctly reflect the intention of a reporting requirement and not an approval requirement.

Discussion: The Department thanks the commenter for their observation. We agree that we are seeking to maintain the requirement to report new GE programs or changes to existing GE programs, and to add a requirement to report to the Department if a GE program is being established or re-established that would once have been ineligible to do so under § 668.403.

Changes: The provision was repositioned outside of § 600.10(c)(1), from § 600.10(c)(1)(v) to § 600.10(c)(3), with a slight rewording for additional clarity.

Comments: One commenter observed that while proposed § 668.604(c)(2) would prevent institutions from adding any new GE programs to their list of eligible programs if they are substantially similar to a failing program that became ineligible or was voluntarily discontinued, and while language in the preamble to the 2023 NPRM indicated an intent to use the same four-digit CIP prefix as under the 2014 rule, the rule as proposed did not contain a definition for “substantially similar.”

Discussion: The Department agrees with the commenter and thanks them for bringing this to our attention. We will adopt a similar definition of “substantially similar program” using the four-digit CIP prefix as was used in the 2014 Prior Rule.

We are establishing at § 668.2 that two programs are substantially similar to one another if they share the same four-digit CIP code. Institutions may not establish a new GE program that shares the same four-digit CIP code as a program that became ineligible or was voluntarily discontinued when it was failing within the last three years. An

institution may establish a new GE program with a different four-digit CIP code that is not substantially similar to an ineligible or discontinued GE program and provide an explanation of how the new program is different when it submits the certification for the new program. We presume based on that submission that the new program is not substantially similar to the ineligible or discontinued program, but the information may be reviewed on a case-by-case basis so a new program is not substantially similar to the other program.

We believe that this revision strikes an appropriate balance between preventing institutions from closing and restarting a poorly performing program to avoid accountability and ensuring that institutions are not prevented from establishing different programs to provide training in fields where there is demand. We believe that it is appropriate to require an institution that is establishing a new program to provide a certification under § 668.604 that includes an explanation of how the new GE program is not substantially similar to each program offered by the institution that, in the prior three years, became ineligible under the regulations' accountability provisions or was voluntarily discontinued by the institution when the program was failing the D/E rates or EP measure. In the first instance, the institution will possess information on the programs in question, and the rule still will provide a safeguard in the form of an opportunity for the Department to evaluate such submissions when appropriate.

Changes: We have added a definition of “substantially similar program” under § 668.2.

Miscellaneous

Comments: One commenter recommended that the Department monitor the quality of education, or oversee curriculum, as the student progresses through their academic program, not just by using metrics established at the end of a program.

Discussion: The Department's authority in postsecondary education matters is limited to issues relating to Federal student aid, the use of Federal funds, and the specific programs administered by the Department. Further, under section 103 of the Department of Education Organization Act of 1979, the Department is generally prohibited from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of an educational institution, school, school

²¹² For additional detail, see the discussion above in “Tipped Income.”

system, or accrediting agency or association.²¹³ Consequently, we do not have the authority—and are expressly prohibited from regulating—postsecondary institutions' curriculum.

Changes: None.

Comments: A few commenters suggested ways to properly identify GE programs and determine the most appropriate method and period to measure earnings. Suggested approaches included institutions self-certifying the existence of adequate mechanisms already in place, provided they point to a specific State legal requirement or process that justifies the extended time period, or the Department could periodically accept submissions from reliable authorities (e.g., State regulatory bodies, accreditors or occupational industry groups) regarding covered occupations, and the Department could periodically publish resulting determinations in the **Federal Register**.

Discussion: We appreciate these suggestions. The methods for identifying GE programs and reporting earnings data included in § 668.405 allow for consistent calculations and data across states, programs, and institutions. We believe it is critical to provide students and families access to information that is comparable and consistently calculated.

Changes: None.

Other Accommodations and Special Circumstances

Comments: Many commenters argued that the Department must consider economic factors such as recessions and the COVID-19 pandemic. These commenters stressed that these events led, and could again lead in the future, to widespread unemployment and depressed earnings. These commenters further stated that it would unreasonably penalize institutions to use earnings data from periods of time that many graduates, particularly in the health and beauty industry, were prohibited from or otherwise unable to work.

Discussion: We believe the need for the financial value transparency and GE program accountability frameworks is too urgent to postpone any of their primary components to such an extent. The first official rates published under these regulations will, for most programs, be based on students who completed a program in award years 2018 and 2019, measuring their earnings outcomes in 2021 and 2022. The impact of the COVID-19 pandemic was most pronounced in 2020, and the labor market had largely recovered by 2022,

with strong earnings growth particularly among lower income workers. While the unemployment rate for workers with some college or an associate degree overall was 6.6 percent in July of 2021, up from its rate in January of 2019 of 3.9 percent, this 2.7 percentage point difference in employment will have very little impact on median earnings—this is an additional benefit of using the median. And overall earnings growth among employed workers was very strong. By July of 2022, the unemployment rate had improved to 3.5 percent—tied for as low as it had ever been in the past 50 years.²¹⁴ On balance, then, we do not expect the median earnings of most program graduates to have been distorted by the pandemic in the relevant years such that discarding the metrics based on these years is necessary.

This assessment is bolstered by analysis of College Scorecard data. The Department does not have earnings measures for programs yet for 2021. But comparing College Scorecard earnings measures based on the year 2020—as noted above, by a large margin the year with the greatest elevation in unemployment due to the pandemic—suggests the pandemic may not have had a dramatic impact on measured earnings. Comparing 3-years earnings estimates based on earnings measured in 2018–2019 to those based on 2019–2020 (in real dollars), shows that the pandemic did not lead to systematically lower measured median earnings for all or even most programs. The middle 50 percent of programs ranged from a decline in earnings of 4.2 percent to an increase in earnings of 4.0 percent, with the median program experiencing no change in earnings across the two periods. Since the labor market had recovered considerably by 2021, we do not anticipate program earnings data based on earnings in 2021 and 2022 to be overly influenced by the pandemic for most programs.

Changes: None.

Comments: Several commenters stated that various State licensing boards were closed, behind, or backlogged by one to two years during the COVID-19 pandemic. These delays in State licensure substantially hindered job placements and earnings for graduates according to these commenters, who stated that many new graduates were not able to move forward and earn money until 2023.

²¹⁴ The official monthly civilian unemployment rate data can be accessed here: <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>.

Discussion: The Department recognizes that the COVID-19 pandemic and national emergency may have impacted data from some years included in the initial reporting period. But as noted above, available data suggest these impacts may be limited in scope even in 2020, the year when employment effects of the pandemic were most pronounced. Postponing sanctions until such time as no earnings data through 2022 is included in the D/E rate or EP calculations would delay the benefits of the rule until at least the 2026–2027 award year. To repeat, we believe the need for the transparency and accountability measures is too urgent to postpone any of the primary components to such an extent.

Changes: None.

Comments: One commenter asked for an exception in the final rule for barbering and cosmetology schools based on the unique circumstances of those schools. Specifically, the commenter suggested that the final rule should provide for (1) a proxy amount to account for unreported earnings that would be added to Federal agency earnings data for barbering/cosmetology programs; (2) an alternate earnings appeal as in the 2014 GE Rule; and (3) an exemption for institutions with revenues of \$10 million or below.

Discussion: As stated above, we do not believe it is appropriate to make an exception for these institutions because we believe the students at these institutions are just as deserving of protection from accumulating unaffordable debt or experiencing no earnings gains from GE programs. We discuss the issues of tipped income and earnings appeals elsewhere in this final rule. Moreover, we do not believe there is a reasoned basis for an exception based upon revenue amounts, nor why such an exception should be only applied to cosmetology schools. Commenters did not supply any persuasive bases for those suggested carveouts. We believe the GE program accountability framework should be applied to the programs that are covered by the GE provisions of the HEA, which include cosmetology programs.

Changes: None.

Comments: Another commenter requested that we not make exceptions to the GE rules for some institutions, and we do not allow for “carve outs.” The commenter stated that allowing institutions to offer low earnings and low ROI programs without a program information website or student acknowledgments is harmful to prospective students seeking to attend these programs and cannot be justified.

²¹³ 20 U.S.C. 3403(b).

Discussion: We appreciate the commenter's support.

Changes: None.

Financial Value Transparency and Gainful Employment (GE)

Executive Orders 12866 and 13563 and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

The Department estimates the quantified annualized economic and net budget impacts to be in excess of \$200 million. Annualized transfers between institutions and the Federal Government through borrowers are estimated to be \$1.2 billion at a 7 percent discount rate and \$1.3 billion at a 3 percent discount rate in reduced Pell grants and loan volume. This analysis also estimates additional annualized transfers of \$747 million (at a 3 percent discount rate; \$732 million at 7 percent discount rate) among institutions as students shift programs and estimated annualized paperwork and compliance burden of \$105.6 million (at a 3 percent discount rate; \$109.5 million at a 7 percent discount rate) are also detailed in this analysis. Therefore, this final action is subject to review by OMB under section

3(f) of Executive Order 12866 (as amended by Executive Order 14094). Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as covered by 5 U.S.C. 804(2). Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), we have determined that the benefits of this regulatory action will justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select 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 the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations to address inadequate protections for students and taxpayers in the current regulations and to implement recent changes to the HEA. In choosing among alternative regulatory approaches, we selected those approaches that

maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, we compare these final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

1. Covered Rule Designation

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated that this rule is covered under 5 U.S.C. 804(2) and (3).

2. Need for Regulatory Action

Summary

The title IV, HEA student financial assistance programs are a significant annual expenditure by the Federal Government. When used well, Federal student aid for postsecondary education can help boost student outcomes and economic mobility. But the Department is concerned that there are too many instances in which the financial returns of programs leave students with debt they cannot afford or with earnings that leave students no better off than similarly aged students who never pursued a postsecondary education.

The final regulations will provide stronger protections for current and prospective students of programs that typically leave graduates with high debt burdens or low earnings. Under a program-level transparency and accountability framework, the Department will assess a program's debt and earnings outcomes based on debt-to-earnings (D/E) and earnings premium (EP) metrics. These regulations will require institutions to provide current and prospective students with a link to a Department website providing the debt and earnings outcomes of all programs. Students considering enrolling in all eligible programs, other than undergraduate degree programs, that have failed D/E metrics must acknowledge they have viewed the information prior to entering into an enrollment agreement with an institution. Students enrolled or considering enrollment in GE programs

failing either the EP or D/E measures will receive warnings that must be acknowledged prior to receiving title IV, HEA funds. Finally, GE programs that consistently fail to meet the performance metrics will become ineligible for title IV, HEA funds.

The regulations will, therefore, increase transparency and strengthen accountability for postsecondary institutions and programs in several critical ways. All institutions will be required to provide students a link to access information about debt and earnings outcomes. Non-GE certificate and graduate programs not meeting the D/E standards will be required to have students acknowledge viewing this information before entering enrollment agreements, and career training programs failing either the D/E or EP metrics will need to warn students about the possibility that they would lose eligibility for Federal aid. Some institutions will have to improve their offerings or lose access to Federal aid. As a result, students and taxpayers will have greater assurances that their money is spent at institutions that deliver value and merit Federal support.

The Financial Value Transparency and GE eligibility provisions in subparts Q and S of the final regulations are intended to address the problem that many programs are not delivering sufficient financial value to students and taxpayers, and students and families often lack the information on the financial consequences of attending different programs needed to make informed decisions about where to attend. These issues are especially prevalent among programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation. Currently, many of these programs leave the typical graduate with unaffordable levels of loan debt in relation to their income, earnings that are no greater than what they would reasonably expect to receive if they had not attended the program, or both.

Through this regulatory action, the Department establishes: (1) A Financial

Value Transparency framework that will increase the quality, availability, and salience of information about the outcomes of students enrolled in all title IV, HEA programs and (2) an accountability framework for GE programs that will define what it means to prepare students for gainful employment in a recognized occupation by establishing standards by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds. As noted in the preamble to this regulation, there are different statutory grounds for the transparency and accountability frameworks.

The transparency framework (subpart Q and § 668.43) will establish reporting and program information website requirements that will increase the transparency of student outcomes for all programs. This will provide the most accurate and comparable information possible to students, prospective students, and their families to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Institutions will be required to provide information about program characteristics, outcomes, and costs and the Department will assess a program's debt and earnings outcomes based on debt-to-earnings and earnings premium metrics, using information reported by institutions and information otherwise obtained by the Department. The final rule seeks to provide salient information to students by requiring that institutions provide current and prospective students with a link to view cost, debt, and earnings outcomes of their chosen program on the Department's website. For non-GE programs (excepting undergraduate degree programs where students commonly do not apply to a particular program) failing the debt-to-earnings metrics, the Department will require an acknowledgment that the enrolled or prospective student has viewed the information. Further, the website will provide the public, taxpayers, and the Government with relevant information to help understand

the outcomes of these programs receiving Federal investment.

Finally, the transparency framework will provide institutions with meaningful information that they can use to improve the outcomes for students and guide their decisions about program offerings.

The accountability framework (subpart S) defines what it means to prepare students for gainful employment by establishing standards that assess whether typical students leave programs with reasonable debt burdens and earn more than the typical worker who completed no more education than a high school diploma or equivalent. GE programs that repeatedly fail to meet these criteria will lose eligibility to participate in title IV, HEA student aid programs.

Overview of Postsecondary Programs Supported by Title IV of the HEA

Under subpart Q, we will, among other things, assess debt and earnings outcomes for students in all programs participating in title IV, HEA programs, including both GE programs and eligible non-GE programs. Under subpart S, we will, among other things, establish title IV, HEA eligibility requirements for GE programs. In assessing the need for these regulatory actions, the Department analyzed program performance. The Department's analysis of program performance is based on data assembled for all title IV, HEA postsecondary programs operating as of March 2022 that also had completions reported in the 2015–16 and 2016–17 award years (AY). This data, referred to as the “2022 Program Performance Data (2022 PPD),” is described in detail in the “Data Used in this RIA” section below, though we draw on it in this section to describe outcome differences across programs.

Table 2.1 reports the number of programs and average title IV, HEA enrollment for all institutions in our data for AY 2016 and 2017. Throughout this RIA, we provide analysis separately for programs that will be affected only by subpart Q and those that will additionally be affected by subpart S (GE programs).

TABLE 2.1—COMBINED NUMBER OF TITLE IV ELIGIBLE PROGRAMS AND TITLE IV ENROLLMENT BY CONTROL AND CREDENTIAL LEVEL COMBINING GE AND NON-GE

	Number of	
	Programs	Enrollees
Public:		
UG Certificates	18,971	869,600
Associate	27,312	5,496,800
Bachelor's	24,338	5,800,700
Post-BA Certs	872	12,600

TABLE 2.1—COMBINED NUMBER OF TITLE IV ELIGIBLE PROGRAMS AND TITLE IV ENROLLMENT BY CONTROL AND CREDENTIAL LEVEL COMBINING GE AND NON-GE—Continued

	Number of	
	Programs	Enrollees
Master's	14,582	760,500
Doctoral	5,724	145,200
Professional	568	127,500
Grad Certs	1,939	41,900
Total	94,306	13,254,700
Private, Nonprofit:		
UG Certificates	1,387	77,900
Associate	2,321	266,900
Bachelor's	29,752	2,651,300
Post-BA Certs	629	7,900
Master's	10,362	796,100
Doctoral	2,854	142,900
Professional	493	130,400
Grad Certs	1,397	35,700
Total	49,195	4,109,300
Proprietary:		
UG Certificates	3,218	549,900
Associate	1,720	326,800
Bachelor's	963	675,800
Post-BA Certs	52	800
Master's	478	240,000
Doctoral	122	54,000
Professional	32	12,100
Grad Certs	128	10,800
Total	6,713	1,870,100
Foreign Private:		
UG Certificates	28	100
Associate	18	100
Bachelor's	1,228	5,500
Post-BA Certs	27	<50
Master's	3,075	9,000
Doctoral	793	2,800
Professional	104	1,500
Grad Certs	77	1,500
Total	5,350	20,400
Foreign For-Profit:		
UG Certificates	1	<50
Master's	6	200
Doctoral	4	1,900
Professional	7	11,600
Total	18	13,700
Total:		
UG Certificates	23,605	1,497,500
Associate	31,371	6,090,700
Bachelor's	56,281	9,133,200
Post-BA Certs	1,580	21,400
Master's	28,503	1,805,800
Doctoral	9,497	346,800
Professional	1,204	283,100
Grad Certs	3,541	89,900
Total	155,582	19,268,200

Note: Counts are rounded to the nearest 100.

There are 123,524 degree programs at public or private nonprofit institutions (hereafter, “eligible non-GE programs” or “non-GE programs”) in the 2022 PPD that will be subject to the transparency regulations in subpart Q but not the GE

regulations in subpart S.²¹⁵ These programs served approximately 16.3 million students annually who received title IV, HEA aid, totaling \$25 billion in grants and \$61 billion in loans. Table

²¹⁵ Throughout the RIA, “not-for-profit” and “nonprofit” are used interchangeably to refer to private nonprofit institutions.

2.2 displays the number of non-GE programs by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Two-digit CIP codes aggregate programs by broad subject area. Table 2.3 displays enrollment of students receiving title IV, HEA program funds in non-GE programs in the same categories.

TABLE 2.2—NUMBER OF NON-GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL

	Public				Private, Nonprofit				Foreign				Total			
	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.		Master's	Doct.	Prof.
1: Agriculture & Related Sciences	693	507	267	143	1	20	95	14	5				27	6		1,788
3: Natural Resources & Conservation	260	433	219	114	2	10	445	67	8				80	9		1,659
4: Architecture & Related Services	91	216	224	43	6	4	102	117	13	4			54	12	2	902
5: Area, Ethnic, Cultural, Gender, & Group Studies	84	366	128	58	2	3	413	58	25				70	20		1,238
9: Communication	460	807	301	75	2	28	1,221	216	20		1	61	102	6		3,300
10: Communications Tech	312	63	9			10	97	16				6	7			520
11: Computer & Information Sciences & Support Services	1,986	857	460	126	1	127	1,051	297	59	2	1	36	59	11		5,073
12: Personal & Culinary Services	539	20				27	21	2					2			611
13: Education	975	1,158	2,204	641	36	94	1,725	2,103	299	25		32	111	29	5	9,438
14: Engineering	516	1,556	1,243	719	15	12	833	524	271			70	86	33	1	5,879
15: Engineering Tech	2,375	563	164	13		98	136	89	7	1		6	25	2		3,479
16: Foreign Languages	286	960	332	167	5	4	1,148	102	93	1		39	91	26		3,254
19: Family & Consumer Sciences/Human Sciences	586	368	182	59	2	13	178	48	12	1		6	24	1	1	1,481
22: Legal Professions & Studies	437	98	81	18	97	44	158	107	42	114	1	36	94	17	29	1,373
23: English Language	262	645	451	121	4	10	1,063	208	57			57	130	57	3	3,068
24: Liberal Arts	1,035	438	120	11	5	265	661	114	9	2		52	43	17	1	2,773
25: Library Science	33	7	57	12	2		2	16	2	1		1	14	2		149
26: Biological & Biomedical Sciences	370	1,222	894	793	15	28	1,678	389	349	7		75	171	58		6,049
27: Mathematics & Statistics	243	660	432	192	2	5	856	135	81	1		15	30	11		2,663
28: Military Science		5	1				2	1				1	3			13
29: Military Tech	8	2	3			1	9	9					1			33
30: Multi/Interdisciplinary Studies	440	716	372	115	6	33	1,023	259	52	4	2	45	139	27	1	3,234
31: Parks & Rec	341	474	253	53	3	18	571	103	6		1	9	21	6		1,859
32: Basic Skills & Developmental/Remedial Education	18	1	2			1										22
33: Citizenship Activities							1						2			3
34: Health-Related Knowledge & Skills	4	2				1	4	1				1	14	2	1	30
35: Interpersonal & Social Skills							1						1			2
36: Leisure & Recreational Activities	12	10	3			1	21	1				7	22	6		83
37: Personal Awareness & Self-Improvement																1
38: Philosophy & Religious Studies	76	435	117	72	1	20	980	161	80	8		17	43	26	1	2,037
39: Theology & Religious Vocations	2	1				144	861	567	167	60	3	16	42	26	1	1,890
40: Physical Sciences	440	1,262	604	418	3	10	1,232	176	167		1	33	67	41	1	4,455
41: Science Technologies/Technicians	171	11	7	1		3	9	1				7	15	5		230
42: Psychology	259	584	477	257	8	36	1,053	424	189	13		61	127	34	3	3,525
43: Homeland Security	1,253	392	195	25		106	476	161	4			2	20	3	1	2,638
44: Public Admin & Social Services	375	474	495	111	8	40	509	254	45	4		6	73	7	2	2,403

TABLE 2.3—TITLE IV ENROLLMENT OF NON-GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL

	TABLE 2.3—TITLE IV ENROLLMENT OF NON-GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL																			
	Public					Private, nonprofit					Foreign					Total				
	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.					
45: Social Sciences	734	2,092	826	400	13	27	2,391	276	158	4	1	142	385	122	2	7,573				
46: Construction Trades ..	464	11	1			21	4						3	1		505				
47: Mechanic & Repair Technologies/Technicians	1,059	19				41	8									1,127				
48: Precision Production	433	2	1			13	5	2								456				
49: Transportation & Materials Moving	114	57	7	1		10	35	5	2				1	2		234				
50: Visual & Performing Arts	1,442	1,746	637	144	8	83	2,585	393	69	1	2	128	225	54	1	7,518				
51: Health Professions & Related Programs	4,288	1,929	1,407	575	299	486	1,794	1,306	406	216	3	45	168	41	44	13,007				
52: Business	3,669	2,688	1,131	143	18	415	3,556	1,554	109	24	1	129	387	25	3	13,852				
53: High School/Secondary Diplomas	1	1					2	1								5				
54: History	165	480	271	103	3	9	737	83	48			40	90	46	1	2,076				
60: Residency Programs	1		4	1	1			1					6	2		16				

TABLE 2.3—TITLE IV ENROLLMENT OF NON-GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL—Continued

	Public				Private, nonprofit				Foreign				Total			
	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.	Master's	Doct.	Prof.	Assoc.	Bach.		Master's	Doct.	Prof.
32: Basic Skills & Developmental/Remedial Education	400	<50	200	.....	.....	100	.....	.....	.....	.....	.....	.....	.....	.....	.....	600
33: Citizenship Activities	.....	.....	.....	.....	.....	.....	<50	.....	.....	.....	.....	.....	<50	.....	.....	<50
34: Health-Related Knowledge & Skills	700	500	.....	.....	.....	<50	100	<50	.....	.....	.....	<50	<50	<50	.....	1,400
35: Interpersonal & Social Skills	.....	.....	.....	.....	.....	.....	<50	.....	.....	.....	.....	.....	<50	.....	.....	<50
36: Leisure & Recreational Activities	600	700	<50	.....	.....	<50	700	<50	.....	.....	.....	<50	<50	<50	.....	2,100
37: Personal Awareness & Self-Improvement	.....	.....	.....	.....	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	<50
38: Philosophy & Religious Studies	2,100	18,400	1,100	1,000	<50	2,100	23,600	3,100	1,600	100	.....	<50	100	100	<50	53,200
39: Theology & Religious Vocations	<50	<50	.....	.....	.....	5,700	51,800	38,100	4,500	2,300	<50	100	100	100	<50	102,800
40: Physical Sciences	44,300	114,300	7,000	7,500	<50	100	33,700	1,100	2,500	.....	0	100	100	100	<50	210,700
41: Science Technologies/Technicians	16,300	1,500	100	<50	.....	100	400	<50	.....	.....	.....	<50	<50	<50	.....	18,500
42: Psychology	81,000	330,000	24,900	9,700	100	3,100	157,300	49,200	16,100	500	.....	300	300	100	<50	672,500
43: Homeland Security	218,200	167,500	13,100	500	.....	12,500	84,800	12,000	100	.....	.....	<50	<50	<50	<50	508,700
44: Public Admin & Social Services	53,800	100,500	66,200	2,200	900	5,500	49,700	45,500	1,000	500	.....	<50	100	<50	<50	326,100
45: Social Sciences	82,800	320,200	15,500	7,400	200	300	125,700	11,900	2,300	<50	0	800	1,700	300	<50	569,200
46: Construction Trades	18,300	1,100	<50	.....	.....	1,000	100	.....	.....	.....	.....	.....	<50	<50	.....	20,500
47: Mechanic & Repair Technologies/Technicians	71,000	700	.....	.....	.....	7,700	1,200	.....	.....	.....	.....	.....	.....	.....	.....	80,700
48: Precision Production	23,700	<50	<50	.....	.....	600	100	<50	.....	.....	.....	.....	.....	.....	.....	24,400
49: Transportation & Materials Moving	6,900	11,900	300	<50	.....	1,300	9,800	1,400	<50	.....	.....	.....	<50	<50	.....	31,700
50: Visual & Performing Arts	118,600	215,900	14,300	3,400	<50	3,000	137,400	12,800	1,100	<50	<50	600	900	100	<50	508,200
51: Health Professions & Related Programs	902,300	591,600	123,300	37,800	91,500	98,700	328,300	154,900	54,800	75,400	<50	200	600	1,000	1,400	2,461,800
52: Business	641,600	876,800	124,200	2,000	1,000	40,500	490,100	190,400	6,700	1,100	0	600	1,200	<50	<50	2,376,100
53: High School/Secondary Diplomas	<50	1,600	.....	.....	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	1,600
54: History	9,000	63,800	5,900	2,200	<50	100	25,700	2,400	1,000	.....	.....	100	300	100	0	110,500
60: Residency Programs	0	.....	<50	<50	<50	.....	.....	<50	.....	.....	.....	.....	<50	<50	.....	100

Note: Counts rounded to the nearest 100.

GE programs are non-degree programs, including diploma and certificate programs, at public and private nonprofit institutions and educational programs at for-profit institutions of higher education regardless of program length or credential level.²¹⁶ Common GE programs provide training for occupations in fields such as cosmetology, business administration,

²¹⁶ “For-profit” and “proprietary” are used interchangeably throughout this RIA. Foreign schools are schools located outside of the United States at which eligible US students can use Federal student aid.

medical assisting, dental assisting, nursing, and massage therapy. There were 32,058 GE programs in the 2022 PPD.²¹⁷ About two-thirds of these programs are at public institutions, 11 percent at private nonprofit institutions, and 21 percent at for-profit institutions. In AY 2016 or 2017, these programs annually served approximately 2.9

²¹⁷ Note that the 2022 PPD will differ from the universe of programs that are subject to the final GE regulations for the reasons described in more detail in the “Data Used in this RIA” section, including that the 2022 PPD includes programs defined by four-digit CIP code while the rule defines programs by six-digit CIP code.

million students who received title IV, HEA aid. The Federal investment in students attending GE programs is significant and growing. In AY 2022, students enrolled in GE programs received approximately \$5 billion in Federal Pell grant funding and approximately \$11 billion in Federal student loans. Table 2.4 displays the number of GE programs grouped by two-digit CIP code, credential level, and institutional control in the 2022 PPD. Table 2.5 displays enrollment of students receiving title IV, HEA program funds in GE programs in the same categories.

TABLE 2.4—NUMBER OF GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL

	Public			Private, nonprofit			Proprietary						Foreign					Total			
	UG certs	Post- BA cert	Grad cert	UG certs	Post- BA cert	Grad cert	UG certs	Assoc.	Bach.	Post- BA cert	Master's	Doct.	Prof.	Grad cert	Post- BA cert	Master's	Doct.		Prof.	Grad cert	
1: Agriculture & Related Sciences	375	4	3	7	.....	2	11	4	1	1	.....	.....	.....	.....	.....	.....	.....	.....	1	409	
3: Natural Resources & Conservation	91	10	21	8	1	2	2	.....	5	1	1	.....	.....	1	.....	.....	.....	.....	.....	143	
4: Architecture & Related Services	29	10	10	4	1	8	1	.....	4	.....	3	.....	2	.....	1	.....	.....	.....	1	74	
5: Area, Ethnic, Cultural, Gender, & Group Studies	61	14	42	14	4	12	1	.....	.....	.....	.....	.....	.....	.....	3	.....	.....	.....	1	153	
9: Communication	171	12	38	25	7	16	14	14	25	.....	9	.....	.....	1	1	.....	.....	.....	2	335	
10: Communications Tech	272	2	2	3	3	3	24	23	24	1	3	.....	.....	.....	1	.....	.....	.....	.....	361	
11: Computer & Information Sciences & Support Services	1,479	28	64	51	31	36	140	168	110	1	41	4	.....	8	.....	.....	.....	.....	1	2,162	
12: Personal & Culinary Services	788	2	2	34	1	.....	900	79	11	4	6	3	4	7	2	.....	.....	.....	.....	1,843	
13: Education	461	222	494	62	134	406	35	20	33	8	63	23	1	29	1	2	.....	.....	5	1,999	
14: Engineering	98	31	62	10	6	33	4	5	10	.....	5	.....	.....	.....	1	.....	.....	.....	1	267	
15: Engineering Tech	1,453	5	21	34	4	4	84	71	21	1	4	.....	.....	1	.....	.....	.....	.....	3	1,706	
16: Foreign Languages	205	15	9	37	5	3	.....	.....	2	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	278	
19: Family & Consumer Sciences/Human Sciences	530	7	23	18	5	7	10	8	11	1	2	1	.....	2	.....	.....	.....	.....	.....	625	
22: Legal Professions & Studies	285	18	15	35	15	26	36	66	24	4	5	1	8	.....	2	.....	.....	.....	12	552	
23: English Language	79	18	35	13	5	6	11	5	11	.....	2	.....	.....	.....	.....	.....	.....	.....	3	190	
24: Liberal Arts	329	15	22	22	18	19	1	10	12	.....	2	1	.....	.....	1	.....	.....	.....	1	453	
25: Library Science	22	7	16	.....	1	5	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	52	
26: Biological & Biomedical Sciences	69	22	61	22	14	25	2	1	8	.....	1	2	.....	1	1	3	.....	.....	2	234	
27: Mathematics & Statistics	18	12	26	10	2	3	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	73	
28: Military Science	.....	.....	1	.....	.....	.....	1	1	1	.....	.....	.....	.....	1	.....	.....	.....	.....	5	.....	
29: Military Tech	6	.....	1	1	.....	3	1	2	1	.....	1	.....	.....	.....	.....	.....	.....	.....	16	.....	
30: Multi/Interdisciplinary Studies	156	51	105	26	23	36	5	4	14	2	6	.....	.....	5	.....	.....	.....	.....	2	435	
31: Parks & Rec	145	7	15	14	3	9	25	25	8	.....	2	1	.....	1	1	.....	.....	.....	1	257	
32: Basic Skills & Developmental/Remedial Education	26	.....	.....	4	.....	1	7	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	39	
33: Citizenship Activities	1																			1	
34: Health-Related Knowledge & Skills	4		3	1		2	5													15	
35: Interpersonal & Social Skills						1													1		
36: Leisure & Recreational Activities	5			2			1				1									9	
37: Personal Awareness & Self-Improvement	1	1	1																	3	
38: Philosophy & Religious Studies	15	1	7	23	6	7			3		1								1	64	
39: Theology & Religious Vocations	1			60	49	50		1	5		7	1	1		1					176	
40: Physical Sciences	41	7	16	15		5	1	1	3										1	90	
41: Science Technologies/Technicians	75	2	3	1	1		1	1												84	
42: Psychology	38	23	74	19	20	59		2	14	2	19	15		7	1				3	296	

TABLE 2.5—TITLE IV ENROLLMENT OF GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL

TABLE 2.5—TITLE IV ENROLLMENT OF GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL																											
	Public					Private, nonprofit					Proprietary					Foreign					Total						
	UG certs	Post- BA cert	Grad cert	UG certs	Post- BA cert	UG certs	Grad cert	Assoc.	Bach.	Post- BA cert	Mas- ter's	Doct.	Prof.	Grad cert	UG certs	Post- BA cert	Mas- ter's	Doct.	Prof.	Grad cert		UG certs	Post- BA cert	Mas- ter's	Doct.	Prof.	Grad cert
43: Homeland Security ..	747	15	32	42	8	30	31	74	58	1	23	4	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,071
44: Public Admin & So- cial Services	161	28	59	17	6	28	3	5	14	1	19	7	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	355
45: Social Sciences	164	30	79	44	11	29	.....	1	15	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5
46: Construction Trades	840	.....	.....	28	.....	1	62	14	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	390
47: Mechanic & Repair Technologies/Techni- cians	1,469	1	1	42	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	946
48: Precision Production	751	.....	.....	18	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,767
49: Transportation & Ma- terials Moving	187	2	2	11	.....	.....	.....	5	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	833
50: Visual & Performing Arts	540	16	48	75	29	36	65	85	98	1	26	.....	1	8	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	240
51: Health Professions & Related Programs	4,025	124	327	386	132	274	1,261	637	174	8	101	35	11	25	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10
52: Business	2,733	100	189	140	83	208	198	308	233	15	117	23	4	27	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5
53: High School/Sec- ondary Diplomas	4	.....	.....	.....	.....	.....	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	14
54: History	18	9	7	8	.....	.....	1	1	6	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6
60: Residency Programs	3	1	3	1	1	2	2	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	55
1: Agriculture & Related Sciences	5,600	<50	<50	<50	<50	200	.....	300	<50	<50	<50	.....	.....	.....	<50	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	15,800
3: Natural Resources & Conservation	1,200	<50	200	200	100	100	<50	100	4,400	400	400	200	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	18,200
4: Architecture & Related Services	600	<50	<50	<50	<50	<50	<50	<50	600	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0
5: Area, Ethnic, Cultural, Gender, & Group Studies	800	100	300	300	300	100	100	<50	.....	.....	.....	.....	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,500
9: Communication	3,700	100	400	400	<50	300	<50	3,200	2,700	7,300	<50	800	200	<50	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15,800
10: Communications Tech	4,700	<50	<50	<50	<50	<50	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,500
11: Computer & Information Sciences & Support Services	34,500	200	1,100	1,100	1,200	300	500	8,900	20,500	52,500	<50	6,400	<50	300	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	127,100
12: Personal & Culinary Services	31,000	<50	<50	<50	3,200	<50	<50	176,800	7,600	1,100	<50	200	<50	100	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	220,100
13: Education	16,100	4,500	16,000	16,000	1,700	2,400	14,100	800	6,700	33,500	100	37,000	100	2,100	0	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	152,000
14: Engineering	8,600	200	500	500	300	300	<50	200	500	1,500	.....	.....	.....	.....	0	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	11,900
15: Engineering Tech	22,500	<50	300	300	1,100	<50	<50	14,500	6,300	8,000	<50	1,400	<50	<50	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	54,100
16: Foreign Languages	4,600	<50	<50	<50	<50	400	<50	<50	.....	300	.....	.....	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,400
19: Family & Consumer Sciences/Human Sciences	22,100	<50	200	200	500	100	100	600	2,100	4,500	<50	1,000	<50	100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	31,600
22: Legal Professions & Studies	7,100	500	400	400	900	400	800	1,200	6,700	2,200	200	400	<50	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	22,600
23: English Language	3,900	100	300	300	1,600	1,600	100	4,300	700	4,300	.....	300	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15,700
24: Liberal Arts	139,500	500	3,000	3,000	1,400	1,400	500	<50	2,300	3,800	.....	200	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	151,900
25: Library Science	300	100	400	400	.....	.....	<50	100	.....	300	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,100
26: Biological & Biomedical Sciences	2,700	100	600	600	300	300	100	<50	<50	2,700	<50	<50	<50	<50	0	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,900
27: Mathematics & Statistics	400	200	100	<50	100	100	<50	<50	<50	400	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,300
28: Military Science .....	.....	.....	.....	.....	<50	<50	.....	<50	<50	200	<50	.....	.....	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	200
29: Military Tech	100	.....	.....	<50	<50	<50	.....	<50	<50	200	100	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	400
30: Multidisciplinary Studies	14,100	700	1,600	1,600	500	500	500	100	3,500	25,000	<50	1,200	<50	300	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	48,100
31: Parks & Rec	4,000	<50	200	200	500	500	<50	800	1,600	5,700	.....	500	<50	<50	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,500
32: Basic Skills & Developmental/Remedial Education	600	.....	.....	.....	<50	<50	<50	500	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,100
33: Citizenship Activities	<50	.....	.....	<50	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	<50
34: Health-Related Knowledge & Skills	100	.....	.....	<50	.....	0	<50	100	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	200
35: Interpersonal & Social Skills .....	.....	.....	.....	.....	.....	.....	0	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0
36: Leisure & Recreational Activities	200	.....	.....	.....	<50	<50	<50	<50	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	300
37: Personal Awareness & Self-Improvement	100	<50	500	500	500	200	200	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	600
38: Philosophy & Religious Studies	200	<50	<50	<50	<50	200	<50	.....	500	.....	.....	100	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,200
39: Theology & Religious Vocations	<50	.....	.....	.....	.....	2,300	200	.....	<50	3,200	<50	900	.....	300	0	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	8,900
40: Physical Sciences	900	<50	100	100	100	100	1,700	<50	<50	<50	.....	.....	.....	.....	.....	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,200
41: Science Technologies/Technicians	2,200	<50	<50	<50	<50	<50	<50	100	100	20,300	<50	17,800	<50	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,400
42: Psychology	2,700	300	1,400	1,400	400	400	200	200	<50	60,100	<50	7,000	<50	2,200	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	57,500
43: Homeland Security	33,400	200	600	600	1,200	100	100	200	21,400	60,100	0	7,000	700	200	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	127,500
44: Public Admin & Social Services	6,500	700	800	800	100	100	100	200	4,300	22,500	<50	10,100	4,400	100	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	50,100
45: Social Sciences	3,200	400	700	700	700	500	500	.....	<50	6,100	.....	1,400	700	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13,600
46: Construction Trades	18,000	.....	.....	.....	.....	1,800	<50	8,300	900	.....	.....	.....	.....	.....	<50	<50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	28,900

TABLE 2.5—TITLE IV ENROLLMENT OF GE PROGRAMS BY CIP2, CREDENTIAL LEVEL, AND CONTROL—Continued

[illegible]

Tables 2.6 and 2.7 show the student characteristics of title IV, HEA students in non-GE and GE programs, respectively, by institutional control, predominant degree of the institution, and credential level. In all three types of institutional control, the majority of students served by the programs are female students. At public non-GE programs, out of all enrolled title IV,

HEA students: 58 percent received a Pell grant, 31 percent are 24 years or older, 36 percent are independent, and 43 percent non-white. At non-GE programs at nonprofit private institutions, 43 percent of students received a Pell Grant, 37 percent are 24 years or older, 44 percent are independent, and 43 percent are non-white. Sixty-eight percent of students in

the average public GE program ever received a Pell grant, 44 percent are 24 years or older, 50 percent are independent, and 46 percent are non-white. At for-profit GE programs, 67 percent of students received a Pell grant, 66 percent are 24 years or older, 72 percent are independent, and 59 percent are non-white.

TABLE 2.6—CHARACTERISTICS OF NON-GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL
[Enrollment-weighted]

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Public						
Less-Than 2-Year:						
Associate	5,700	36.4	37.2	73.8	41.8	41.7
Bachelor's	10,600	59.4	40.6	54.0	37.4	62.6
Master's	8,700	71.8	34.7	36.1	27.7	81.5
2-Year:						
Associate	5,800	29.6	37.5	74.1	49.3	34.8
Bachelor's	9,300	48.3	41.3	69.4	40.3	55.6
Master's	7,600	79.6	37.4	52.2	63.7	90.9
Professional	5,800	100.0	33.3	33.3	.....	100.0
4-Year or Above:						
Associate	7,600	36.5	37.8	67.0	39.7	42.2
Bachelor's	16,600	24.0	43.3	47.3	39.8	27.0
Master's	11,900	60.6	35.9	32.9	40.2	72.7
Doctoral	10,400	69.9	41.4	28.0	44.1	84.1
Professional	7,800	55.7	48.4	10.8	37.1	91.7
Total:						
Total	11,300	30.5	40.2	57.8	43.2	35.6
Private, Nonprofit						
Less-Than 2-Year:						
Associate	2,600	64.6	33.8	89.7	65.9	74.8
Bachelor's	9,100	65.8	37.1	67.0	62.6	70.0
Master's	9,200	52.2	30.7	37.7	56.3	61.4
Doctoral	5,500	24.7	14.6	32.1	41.2	58.5
Professional	4,600	52.0	54.6	1.9	39.6	97.1
2-Year:						
Associate	6,300	47.4	34.8	72.4	52.2	53.6
Bachelor's	8,300	60.7	40.7	68.3	51.4	64.8
Master's	9,600	86.5	34.0	28.9	69.9	89.2
Doctoral	9,600	81.3	26.4	14.6	62.5	100.0
4-Year or Above:						
Associate	6,800	54.9	34.6	70.2	49.3	60.5
Bachelor's	17,600	23.2	39.9	48.9	40.2	26.1
Master's	13,100	67.3	35.3	25.0	45.9	78.0
Doctoral	12,200	69.4	41.1	17.7	49.7	87.1
Professional	9,200	57.2	48.8	10.1	43.0	89.1
Total:						
Total	15,400	37.3	39.0	43.3	42.6	43.5

Note: Average EFC values rounded to the nearest 100. Credential levels with very few programs and most table elements missing are suppressed.

TABLE 2.7—CHARACTERISTICS OF GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
Public						
Less-Than 2-Year:						
UG Certificates	4,500	45.5	37.5	76.5	42.4	53.1
Post-BA Certs	6,300	75.9	30.4	57.9	.....	78.2
Grad Certs	8,100	57.1	16.7	57.5	32.1	65.2
2-Year:						

TABLE 2.7—CHARACTERISTICS OF GE STUDENTS BY CONTROL, PREDOMINANT DEGREE, AND CREDENTIAL LEVEL—Continued

	Average EFC	Percent of students who are . . .				
		Age 24+	Male	Pell	Non-white	Independent
UG Certificates	6,100	41.9	37.8	70.3	50.9	46.8
Post-BA Certs	10,800	47.2	23.7	58.4	.....	59.5
Grad Certs	7,600	89.7	68.1	68.9	50.6	89.7
4-Year or Above:						
UG Certificates	23,300	28.5	41.6	36.8	32.3	31.8
Post-BA Certs	11,500	60.5	31.6	35.9	.....	71.3
Grad Certs	10,700	69.8	30.1	39.2	36.2	79.0
Total:						
Total	7,100	43.7	37.6	68.3	45.7	49.8
Private, Nonprofit						
Less-Than 2-Year:						
UG Certificates	4,900	48.3	36.6	80.2	63.7	58.3
Post-BA Certs	15,600	51.0	59.2	3.3	.....	65.3
Grad Certs	7,600	28.2	38.7	3.1	47.2	62.1
2-Year:						
UG Certificates	3,300	61.0	21.1	83.2	56.3	73.8
Post-BA Certs	10,100	94.8	28.4	53.7	.....	94.8
Grad Certs	26,700	89.5	10.5	19.3	100.0	100.0
4-Year or Above:						
UG Certificates	10,500	37.4	35.8	66.4	65.8	42.1
Post-BA Certs	14,200	60.1	31.8	36.0	.....	68.5
Grad Certs	11,500	70.8	32.8	29.8	44.5	80.3
Total:						
Total	8,300	55.1	32.3	60.6	57.3	64.2
Proprietary						
Less-Than 2-Year:						
UG Certificates	3,900	45.7	31.5	82.4	63.0	56.5
Associate	5,900	56.6	32.2	80.6	63.2	63.7
Bachelor's	4,200	54.2	36.9	86.5	83.3	57.3
Post-BA Certs	9,100	70.7	44.7	36.8	.....	77.2
Master's	9,200	85.4	26.7	32.2	62.1	90.4
Doctoral	9,800	98.6	19.2	32.0	47.6	99.7
Professional	14,100	84.7	19.5	30.5	54.2	100.0
Grad Certs	6,200	64.6	7.7	63.9	6.6	67.4
2-Year:						
UG Certificates	4,800	48.4	39.8	77.8	64.2	57.1
Associate	5,700	51.8	33.3	77.8	60.6	58.1
Bachelor's	7,900	61.6	42.7	70.5	65.0	67.9
Post-BA Certs	13,400	86.4	25.0	39.4	.....	86.4
Master's	7,100	82.3	42.1	31.0	65.1	89.5
Doctoral	0	0.0	0.0	100.0	.....	0.0
Professional	5,700	71.6	46.0	14.6	36.7	99.0
Grad Certs	3,700	64.8	32.4	0.0	24.3	67.6
4-Year or Above:						
UG Certificates	5,400	77.7	22.1	76.2	55.4	84.3
Associate	5,400	75.4	31.9	76.1	57.2	82.7
Bachelor's	9,700	75.2	40.7	64.2	54.6	78.8
Post-BA Certs	7,500	84.6	28.5	54.7	.....	92.3
Master's	11,300	82.3	30.2	38.8	58.0	85.8
Doctoral	19,800	92.9	30.0	25.2	57.9	95.2
Professional	7,100	89.0	25.7	47.1	34.1	93.2
Grad Certs	11,900	88.6	27.1	38.2	63.2	90.7
Total:						
Total	7,700	66.1	34.7	67.3	58.8	72.4

Note: EFC values rounded to the nearest 100.

Outcome Differences Across Programs

A large body of research provides strong evidence of the many significant benefits that postsecondary education and training confers, both private and social. Private pecuniary benefits

include higher wages and lower risk of unemployment.²¹⁸ Increased

²¹⁸ Barrow, L., & Malamud, O. (2015). Is College a Worthwhile Investment? *Annual Review of Economics*, 7(1), 519–555. Card, D. (1999). The

educational attainment also confers private nonpecuniary benefits, such as better health, job satisfaction, and

causal effect of education on earnings. *Handbook of labor economics*, 3, 1801–1863.

overall happiness.²¹⁹ Social benefits of higher or increased number of individuals with a postsecondary education include productivity spillovers from a better educated and more flexible workforce,²²⁰ increased civic participation,²²¹ and improvements in health and well-being for the next generation.²²² Improved productivity and earnings increase tax revenues from higher earnings and lower rates of reliance on social safety net programs. Even though the costs of postsecondary education have risen, there continues to be evidence that the average financial returns to graduates have also generally increased since at least the 1980s.²²³

However, there is also substantial heterogeneity in earnings and other outcomes for students who graduate from different types of institutions and programs. Table 2.8 shows the enrollment-weighted average borrowing and default by control and credential level. Mean borrowing amounts are for title IV, HEA recipients who completed their program in AY 2016 or 2017, with students who did not borrow counting as having borrowed \$0. For borrowing, our measure is the average for each institutional control type and credential level combination of program average debt. For default, our measure is, among borrowers (regardless of completion status) who entered repayment in 2017,

the fraction of borrowers who have ever defaulted three years later. The cohort default rate measure follows the methodology for the official institutional cohort default rate measures calculated by the Department, except done at the program level. Though average debt tends to be higher for higher-level credential programs, default rates tend to be lower. At the undergraduate level, average debt is much lower for public programs than private nonprofit and for-profit programs and default rates are lower for public and nonprofit programs than those at for-profit institutions.

TABLE 2.8—AVERAGE DEBT AND COHORT DEFAULT RATE, BY CONTROL AND CREDENTIAL LEVEL
[Enrollment-weighted]

	Average debt	Cohort default rate
Public:		
UG Certificates	5,759	16.9
Associate	5,932	17.4
Bachelor's	17,935	7.6
Post-BA Certs	7,352	2.3
Master's	29,222	2.9
Doctoral	71,102	2.9
Professional	124,481	0.8
Grad Certs	24,883	2.5
Private, Nonprofit:		
UG Certificates	9,367	12.0
Associate	16,445	14.9
Bachelor's	20,267	7.3
Post-BA Certs	9,497	2.8
Master's	40,272	2.9
Doctoral	128,998	2.3
Professional	151,473	1.3
Grad Certs	40,732	2.4
Proprietary:		
UG Certificates	8,857	14.2
Associate	18,766	15.3
Bachelor's	29,038	12.4
Post-BA Certs	15,790	16.9
Master's	39,507	4.1
Doctoral	99,422	4.4
Professional	96,836	0.7
Grad Certs	47,803	3.9
Foreign Private:		
UG Certificates	(*)	0.0
Associate	(*)	(*)
Bachelor's	17,074	7.0
Post-BA Certs	(*)	(*)
Master's	40,432	2.0
Doctoral	22,600	3.5
Professional	247,269	3.1
Grad Certs	284,200	0.2
Foreign For-Profit:		
Master's	(*)	0.0
Doctoral	84,200	1.4

²¹⁹ Oreopoulos, P., & Salvanes, K.G. (2011). Priceless: The Nonpecuniary Benefits of Schooling. *Journal of Economic Perspectives*, 25(1), 159–184.

²²⁰ Moretti, E. (2004). Workers' Education, Spillovers, and Productivity: Evidence from Plant-Level Production Functions. *American Economic Review*, 94(3), 656–690.

²²¹ Dee, T.S. (2004). Are There Civic Returns to Education? *Journal of Public Economics*, 88(9–10), 1697–1720.

²²² Currie, J., & Moretti, E. (2003). Mother's Education and the Intergenerational Transmission of Human Capital: Evidence from College Openings. *The Quarterly Journal of Economics*, 118(4), 1495–1532.

²²³ Avery, C. & Turner, S. (2013). Student Loans: Do College Students Borrow Too Much-Or Not Enough? *Journal of Economic Perspectives*, 26(1), 165–192. Goldin, C. & Katz, L. (2008). *The Race Between Education and Technology*. Harvard University Press.

TABLE 2.8—AVERAGE DEBT AND COHORT DEFAULT RATE, BY CONTROL AND CREDENTIAL LEVEL—Continued
[Enrollment-weighted]

	Average debt	Cohort default rate
Professional	280,667	1.3

* Cell suppressed because it based on a population of fewer than 30.

Table 2.9 shows median earnings (in 2019 dollars) for graduates (whether or not they borrow) along these same dimensions. Similar patterns hold for earnings, with lower earnings in nonprofit programs for almost all types of credential level.

TABLE 2.9—ENROLLMENT-WEIGHTED AVERAGE OF PROGRAM MEDIAN EARNINGS 3 YEARS AFTER PROGRAM COMPLETION, BY CONTROL AND CREDENTIAL LEVEL

	Median earnings 3 years after completion
Public:	
UG Certificates	33,400
Associate	34,400
Bachelor's	46,100
Post-BA Certs	45,600
Master's	66,600
Doctoral	83,500
Professional	91,300
Grad Certs	71,500
Private, Nonprofit:	
UG Certificates	26,200
Associate	35,700
Bachelor's	48,800
Post-BA Certs	61,600
Master's	68,600
Doctoral	86,200
Professional	88,200
Grad Certs	74,800
Proprietary:	
UG Certificates	25,400
Associate	34,600
Bachelor's	45,600
Post-BA Certs	43,500
Master's	59,300
Doctoral	78,000
Professional	49,200
Grad Certs	52,200
Foreign Private:	
UG Certificates	
Associate	
Bachelor's	8,200
Post-BA Certs	
Master's	38,600
Doctoral	
Professional	88,400
Grad Certs	15,100
Foreign For-Profit:	
Master's	
Doctoral	65,900
Professional	100,400

Note: Values rounded to the nearest 100.

A growing body of research, described below, shows that differences in institution and program quality are important contributors to the variation in borrowing and earnings outcomes described above. That is, differences in graduates' outcomes across programs are not fully (or primarily) explained by the characteristics of the students that

attend. Differences in program quality—measured by the causal effect of attending the program on its students' outcomes—are important.²²⁴ It is,

²²⁴ Black, Dan A. & Smith, Jeffrey A. (2006). Estimating the Returns to College Quality with Multiple Proxies for Quality. *Journal of Labor Economics* 24.3: 701–728. Cohodes, Sarah R. & Goodman, Joshua S. (2014). Merit Aid, College Quality, and College Completion: Massachusetts'

Adams Scholarship as an In-Kind Subsidy. *American Economic Journal: Applied Economics* 6.4: 251–285. Andrews, Rodney J., Li, Jing & Lovenheim, Michael F. (2016). Quantile treatment effects of college quality on earnings. *Journal of Human Resources* 51.1: 200–238. Dillon, Eleanor Wiske & Smith, Jeffrey Andrew (2020). The

therefore, important to provide students with this information and to hold programs accountable for high levels of student debt and poor earnings outcomes. Research reviewed below also shows that GE programs are the programs least likely to reliably provide an adequate return on investment, from the perspective of both the student and society. These findings imply that aggregate student outcomes—including their earnings and likelihood of positive borrowing outcomes—would be improved by limiting student enrollment in low-quality programs.

A recent study computed productivity—value-added per dollar of social investment—for 6,700 undergraduate programs across the United States.²²⁵ In that study, productivity was measured using both private (individual earnings) and social (working in a public service job) notions of value. A main finding was that productivity varied widely even among institutions serving students of similar aptitude, especially at less selective institutions. That is, a dollar spent educating students does much more to increase lifetime earnings potential and public service at some programs than others. The author concludes that “market forces alone may be too weak to discipline productivity among these schools.”

The finding of substantial variation in student outcomes across programs serving similar students or at similar types of institutions or in similar fields has been documented in many other more specific contexts. These include community colleges in California,²²⁶ public two- and four-year programs in Texas,²²⁷ master’s degree programs in Ohio,²²⁸ law and medical schools, and

programs outside the United States.²²⁹ Variation in institutional and program performance is a dominant feature of postsecondary education in the United States.²³⁰

The wide range of performance across programs and institutions means that prospective students face a daunting information problem. The questions of where to go and what to study are key life choices with major consequences. But without a way to discern the differences between programs through comparable, reliably reported measures of quality, students may ultimately have to rely on crude signals about the caliber of education a school offers.

Recent evidence demonstrates that information about colleges, delivered in a timely and relevant way, can shape students’ choices. Students at one large school district were 20 percent more likely to apply to colleges that have information listed on a popular college search tool, compared with colleges whose information is not displayed on the tool. A particularly important finding of the study is that for Black, Hispanic, and low-income students, access to information about local public four-year institutions increases overall attendance at such institutions. This, the author argues, suggests “that students may have been unaware of these nearby and inexpensive options with high admissions rates.”²³¹

This evidence reveals both the power of information to shape student choices at critical moments in the decision process and how a patchwork of information about colleges may result in students missing out on opportunities. Given the variation in quality across programs apparent in the research evidence outlined above, these missed opportunities can be quite costly.

Unfortunately, the general availability of information does not always mean students are able to find and use it. Indeed, evidence on the initial impact of the Department’s College Scorecard college comparison tool found minimal effects on students’ college choices, with any possible effects concentrated among the highest achieving

students.²³² But the contrast between these two pieces of evidence, one where information affects college choices and one where it doesn’t, is instructive: while students generally must seek out the College Scorecard during their college search process, the college search tool from the first study delivers information to students as they are taking other steps through the tool, from requesting transcripts and recommendation letters to submitting applications. It tailors that information to the student, providing information about where previous students from the same high school have enrolled and what their outcomes were. Accordingly, there is some basis to believe that personalized information delivered directly to students at key decision points from a credible source can have an impact.

To that end, the transparency component of these regulations attempts to improve not only the quality of information available to students (by newly collecting key facts about colleges), but also its salience, relevance, and timing. Because this information will be delivered directly to students who are reviewing financial aid packages from colleges and programs which they are considering, students would be likely to see the information and understand its credibility at a time when they are likely to find it most useful for deciding if and where to attend. Better still, the information would not be ambiguous when the message is most critical: if a school is consistently failing to put graduates on better financial footing, students are informed of that fact before they make a financial commitment.

The Department has concluded that relying on just market-disciplining role of information is not sufficient, and that regulation beyond information provision alone is warranted. This conclusion is based on evidence, reviewed below, that such regulations could reduce the risk that students and taxpayers spend money toward programs that will leave them worse off. Program performance is particularly varied and concerning among the non-degree certificate programs offered by all types of institutions, as well as at proprietary degree programs. These are the programs where the Department’s concerns about quality are at their height, especially given the narrower career-focused nature of the credentials offered in this part of the system.

Consequences of Academic Match Between Students and Colleges. *Journal of Human Resources* 55.3: 767–808.

²²⁵ Hoxby, C.M. (2019). The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education*, Hoxby, C.M. & Stange, K.M. (eds). University of Chicago Press: Chicago.

²²⁶ Carrell, S.E. & Kurlander, M. (2019). Estimating the Productivity of Community Colleges in Paving the Road to Four-Year College Success. In *Productivity in Higher Education*, Hoxby, C.M. & Stange, K.M. (eds). University of Chicago Press: Chicago.

²²⁷ Andrews, R.J. & Stange, K.M. (2019). Price Regulation, Price Discrimination, and Equality of Opportunity in Higher Education: Evidence from Texas. *American Economic Journal: Economic Policy*, 11.4, 31–65. Andrews, R.J., Imberman, S.A., Lovenheim, M.F. & Stange, K.M. (2022). The Returns to College Major Choice: Average and Distributional Effects, Career Trajectories, and Earnings Variability. NBER Working Paper w30331.

²²⁸ Minaya, V., Scott-Clayton, J. & Zhou, R.Y. (2022). Heterogeneity in Labor Market Returns to Master’s Degrees: Evidence from Ohio (EdWorkingPaper: 22–629). Retrieved from Annenberg Institute at Brown University: doi.org/10.26300/akgd-5011.

²²⁹ Hastings, J.S., Neilson, C.A. & Zimmerman, S.D. (2013). Are Some Degrees Worth More than Others? Evidence from College Admission Cutoffs in Chile. NBER Working Paper w19241.

²³⁰ A recent overview can be found in Lovenheim, M. & J. Smith (2023). Returns to Different Postsecondary Investments: Institution Type, Academic Programs, and Credentials. In *Handbook of the Economics of Education Volume 6*, E. Hanushek, L. Woessmann & S. Machin (eds). New Holland.

²³¹ Mulhern, Christine (2021). Changing College Choices with Personalized Admissions Information at Scale: Evidence on Naviance. *Journal of Labor Economics* 39.1: 219–262.

²³² Hurwitz, Michael & Smith, Jonathan (2018). Student Responsiveness to Earnings Data in the College Scorecard. *Economic Inquiry* 56.2: 1220–1243.

Certificate programs are intended to prepare students for specific vocations and have, on average, positive returns relative to not attending college at all. Yet this aggregate performance masks considerable variability: certificate program outcomes vary greatly across programs, States, fields of study, and institutions,²³³ and even within the same narrow field and within the same institution.²³⁴ Qualitative research suggests some of this outcome difference stems from factors that providers directly control, such as how they engage with industry and employers in program design and whether they incorporate opportunities for students to gain relevant workforce experience during the program.²³⁵ Unfortunately, many of the most popular certificate programs do not result in returns on investment for students who complete the program. An analysis of programs included in the 2014 GE rule found that at 10 of the 15 certificate programs with the most graduates, graduates had typical earnings of \$18,000 or less, well below what a typical high school graduate would earn.²³⁶

In addition to non-degree programs at all types of institutions, the final rule will subject for-profit degree programs to the transparency framework in § 668.43 and subpart Q, and the GE program-specific eligibility requirements in subpart S. This additional scrutiny, based in the requirements of the HEA, is warranted because for-profit programs have demonstrated particularly poor outcomes, as was shown in Tables 2.8 and 2.9 above. A large body of research provides causal evidence on the many ways students at for-profit colleges are at an economic disadvantage upon exiting their institutions. This research base includes studies showing that students who attend for-profit programs are significantly more likely to suffer

from poor employment prospects,²³⁷ low earnings,²³⁸ and loan repayment difficulties.²³⁹ Students who transfer into for-profit institutions instead of public or nonprofit institutions face significant wage penalties.²⁴⁰ In some cases, researchers find similar earnings or employment outcomes between for-profit and not-for-profit associate and bachelor's degree programs.²⁴¹ However, students pay and borrow more to attend for-profit degree programs, on average.²⁴² The result of higher debt levels paired with lower or equivalent earnings means students attending for-profit degree programs have a worse overall return on investment. This evidence of lackluster labor market outcomes accords with the growing evidence that many for-profit programs may not be preparing students for careers as effectively as comparable programs at public institutions. A 2011 GAO report found that, for nine out of 10 licensing exams in the largest fields of study, graduates of for-profit institutions had lower passage rates than graduates of public institutions.²⁴³ These comparatively poor outcomes may not be surprising, as many for-profit institutions devote more resources to recruiting and marketing than to instruction or student support services. A 2012 investigation by the U.S. Senate Committee on Health, Education, Labor, and Pensions (Senate HELP Committee) found that almost 23 percent of revenues at proprietary institutions were spent on marketing and recruiting

but only 17 percent on instruction.²⁴⁴ The report further found that at many institutions, the number of recruiters greatly outnumbered the career services and support services staff.

Particularly strong evidence comes from a recent study that found that the average undergraduate certificate-seeking student that attended a for-profit institution did not experience any earnings gains relative to the typical worker in a matched sample of high school graduates. They also had significantly lower earnings gains than students who attended certificate programs in the same field of study at public institutions.²⁴⁵ Furthermore, the earnings gain for the average for-profit certificate-seeking student was not sufficient to compensate them for the amount of student debt taken on to attend the program.²⁴⁶ At the same time, research also shows substantial variation in earnings gains from title IV, HEA-eligible undergraduate certificate programs by field of study,²⁴⁷ with students graduating from cosmetology and personal services programs in all sectors experiencing especially poor outcomes.²⁴⁸

Consequences of Attending Low Financial Value Programs

Attending a postsecondary education or training program where the typical student takes on debt that exceeds their capacity to repay can cause substantial harm to borrowers. For instance, high debt may cause students to delay certain milestones; research shows that high levels of debt decreases students' long-term probability of marriage.²⁴⁹ Being overburdened by student loan payments can also reduce the likelihood that borrowers will invest in their future. Research shows that when students borrow more due to high tuition, they are less likely to obtain a graduate

²³³ Aspen Institute (2015). *From College to Jobs: Making Sense of Labor Market Returns to Higher Education*. Washington, DC (www.aspeninstitute.org/publications/labormarketreturns/).

²³⁴ Much of the research is summarized in Ositelu, M.O., McCann, C. & Laitinen, A. (2021). *The Short-Term Credential Landscape*. New America: Washington, DC (www.newamerica.org/education-policy/reports/the-short-term-credentials-landscape).

²³⁵ Soliz, A. (2016). *Preparing America's Labor Force: Workforce Development Programs in Public Community Colleges*. Brookings: Washington, DC (www.brookings.edu/research/preparing-americas-labor-force-workforce-development-programs-in-public-community-colleges/).

²³⁶ Aspen Institute (2015). *From College to Jobs: Making Sense of Labor Market Returns to Higher Education*. Washington, DC (www.aspeninstitute.org/publications/labormarketreturns/).

²³⁷ Deming, D.J., Yuchtman, N., Abulafi, A., Goldin, C. & Katz, L.F. (2016). The Value of Postsecondary Credentials in the Labor Market: An Experimental Study. *American Economic Review*, 106(3), 778–806.

²³⁸ Cellini, S.R. & Chaudhary, L. (2014). The Labor Market Returns to a For-Profit College Education. *Economics of Education Review*, 43, 125–140.

²³⁹ Armona, L., Chakrabarti, R. & Lovenheim, M.F. (2022). Student Debt and Default: The Role of For-Profit Colleges. *Journal of Financial Economics*, 144(1), 67–92.

²⁴⁰ Liu, V.Y.T. & Belfield, C. (2020). The Labor Market Returns to For-Profit Higher Education: Evidence for Transfer Students. *Community College Review*, 48(2), 133–155.

²⁴¹ Lang, K. & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics*, 24, 230–243.

²⁴² Cellini, S.R. & Darolia, R. (2015). College Costs and Financial Constraints. In Hershbein, B. & Hollenbeck, K. (ed). *Student Loans and the Dynamics of Debt* (137–174). W.E. Upjohn Institute for Employment Research: Kalamazoo, MI. Cellini, S.R. & Darolia, R. (2017). High Costs, Low Resources, and Missing Information: Explaining Student Borrowing in the For-Profit Sector. *The ANNALS of the American Academy of Political and Social Science*, 671(1), 92–112.

²⁴³ Government Accountability Office (2011). *Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools* (GAO–12–143).

²⁴⁴ U.S. Senate, Health, Education, Labor and Pensions Committee (July 30, 2012). *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*. Senate HELP Committee, July 30, 2012.

²⁴⁵ Cellini, S.R. & Turner, N. (2019). Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students using Administrative Data. *Journal of Human Resources*, 54(2), 342–370.

²⁴⁶ Id.

²⁴⁷ Lang, K. & Weinstein, R. (2013). The Wage Effects of Not-For-Profit and For-Profit Certifications: Better Data, Somewhat Different Results. *Labour Economics*, 24, 230–243.

²⁴⁸ Dadgar, M. & Trimble, M.J. (2015). Labor Market Returns to Sub-Baccalaureate Credentials: How Much Does a Community College Degree or Certificate Pay? *Educational Evaluation and Policy Analysis*, 37(4), 399–418.

²⁴⁹ Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. *Economics of Education Review*, 53, 207–2016.

degree²⁵⁰ and less likely to take out a mortgage to purchase a home after leaving college.²⁵¹

Unmanageable debt can also have adverse financial consequences for borrowers, including default on their student loans. For those who do not complete a degree, more student debt may raise the probability of bankruptcy.²⁵² Borrowers who default on their loans face potentially serious repercussions. Many aspects of borrowers' lives may be affected, including their ability to sign up for utilities, obtain insurance, or rent an apartment.²⁵³ The Department reports loans more than 90 days delinquent or in default to the major national credit bureaus, and being in default has been shown to be correlated with a 50-to-90-point drop in borrowers' credit scores.²⁵⁴ A defaulted loan can remain on borrowers' credit reports for up to seven years and lead to higher costs that make insurance, housing, and other services and financial products less affordable and, in some cases, harm borrowers' ability to get a job.²⁵⁵ Borrowers who default also lose access to some repayment options and flexibilities. At the same time, their full balances are accelerated and become due immediately, and borrowers become subject to involuntary wage garnishment and Treasury offset which can result in the redirection of income

tax refunds toward the defaulted loan.²⁵⁶

Research shows that borrowers who attend for-profit institutions have higher student loan default rates than students with similar characteristics who attend public institutions.²⁵⁷ Furthermore, most of the rise in student loan default rates from 2000 to 2011 can be traced to increases in enrollment in for-profit institutions and, to a lesser extent, two-year public institutions.²⁵⁸

Low loan repayment also has consequences for taxpayers. Calculating the precise magnitude of these costs would require decades of realized repayment periods for millions of borrowers. However, Table 2.10 shows estimates of the share of disbursed loans that will not be repaid based on simulated debt and earnings trajectories at each program in the 2022 PPD under the income-driven repayment Saving on a Valuable Education (SAVE) plan announced in June 2023.²⁵⁹ These estimates incorporate the subsidy coming from the features of the repayment plan itself (capped payments, forgiveness), not accounting for default or delinquency. Starting with the median earnings and debt at each program, the Department simulated typical repayment trajectories for each program with data available for both measures.

Using U.S. Census Bureau (Census) microdata on earnings and family formation for a nationally representative sample of individuals, the Department

projected the likely repayment experience of borrowers at each program assuming all were enrolled in the SAVE plan (which can be found at 88 FR 43820).²⁶⁰ Starting from the median earnings level of each program, the projections incorporate the estimated earnings growth over the life course through age sixty for individuals starting from the same earnings level in a given State. The projections also include likely spousal earnings, student debt, and family size of each borrower (also derived from the Census data), which makes it possible to calculate the total amount repaid by borrowers under each plan when paying in full each month (even if that means making a payment of \$0). The simulation incorporates different demographic and income groups probabilistically due to important non-linearities in plan structure.

Table 2.10 shows that, among all programs, students who attend programs that fall below the debt-to-earnings standard are consistently projected to repay less on their loans, in present value terms, than they borrowed.²⁶¹ This is true regardless of whether a program is in the public, private nonprofit, or proprietary sector. The projected repayment ratio is even lower for programs that only fail the EP measure because at very low earnings levels, students are expected to make zero-dollar payments over extended periods of time.

TABLE 2.10—PREDICTED RATIO OF DOLLARS REPAYED TO DOLLARS BORROWED BY CONTROL AND PASSAGE STATUS

	Predicted repayment ratio under SAVE
Public:	
No D/E or EP data	0.54
Pass	0.72
Fail D/E (regardless of EP)	0.29
Fail EP only	0.13
Private, Nonprofit:	
No D/E or EP data	0.69

²⁵⁰ Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2023). Tuition, Debt, and Human Capital. *The Review of Financial Studies*, 36(4), 1667–1702.

²⁵¹ Mezza, A., Ringo, D., Sherlund, S. & Sommer, K. (2020). Student Loans and Homeownership. *Journal of Labor Economics*, 38(1), 215–260.

²⁵² Gicheva, D. & Thompson, J. (2015). The Effects of Student Loans on Long-Term Household Financial Stability. In Hershbein, B. & Hollenbeck, K. (ed.). *Student Loans and the Dynamics of Debt* (137–174). W.E. Upjohn Institute for Employment Research: Kalamazoo, MI.

²⁵³ Federal Student Aid. Student Loan Delinquency and Default (studentaid.gov/manage-loans/default).

²⁵⁴ Blagg, K. (2018). Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default. Urban Institute Research Report.

²⁵⁵ Elliott, D. & Granetz Lowitz, R. (2018). What Is the Cost of Poor Credit? Urban Institute Report. Corbae, D., Glover, A. & Chen, D. (2013). Can Employer Credit Checks Create Poverty Traps? *2013 Meeting Papers*, No. 875, Society for Economic Dynamics.

²⁵⁶ Federal Student Aid. Student Loan Delinquency and Default (studentaid.gov/manage-loans/default).

²⁵⁷ Deming, D., Goldin, C., & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164. Hillman, N.W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.

²⁵⁸ Looney, A. & Yannelis, C. (2015). A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults. *Brookings Papers on Economic Activity*, 2, 1–89.

²⁵⁹ The White House (June 30, 2023). Fact Sheet: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers (www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/).

²⁶⁰ These estimates of the subsidy rate are not those used in the budget and do not factor in take-up. Rather, they show the predicted subsidy rates under the assumption that all students are enrolled in SAVE.

²⁶¹ As explained in more detail later, the Department computed D/E and EP metrics only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements.

TABLE 2.10—PREDICTED RATIO OF DOLLARS REPAID TO DOLLARS BORROWED BY CONTROL AND PASSAGE STATUS—Continued

	Predicted repayment ratio under SAVE
Pass	0.96
Fail D/E (regardless of EP)	0.36
Fail EP only	0.19
Proprietary:	
No D/E or EP data	0.43
Pass	0.80
Fail D/E (regardless of EP)	0.25
Fail EP only	0.08
Total:	
No D/E or EP data	0.58
Pass	0.77
Fail D/E (regardless of EP)	0.29
Fail EP only	0.12

Our analysis, provided in more detail in “Analysis of the Regulations,” shows that for many GE programs, the typical graduate earns less than the typical worker with only a high school diploma or has debt payments that are higher than is considered manageable given typical earnings. As we show below, high rates of student loan default are especially common among GE programs that are projected to fail either the D/E rates or the earnings premium metric. Furthermore, low earnings can cause problems in aspects of a graduate’s financial life beyond those related to loan repayment. In 2019, US individuals between ages 25 and 34 who had any type of postsecondary credential reported much higher rates of material hardship if their annual income was below the high school earnings threshold, with those below the threshold reporting being food insecure and behind on bills at more than double the rate of those with earnings above the threshold.²⁶²

In light of the low earnings, high debt, and student loan repayment difficulties for students in some GE programs, the Department has identified a risk that students may be spending their time and money and taking on Federal debt to attend programs that do not provide sufficient value to justify these costs. While even very good programs will have some students who struggle to obtain employment or repay their student loans, the metrics identify programs where the majority of students experience adverse financial outcomes upon completion.

²⁶² These findings come from ED’s analysis of the 2019 Survey of Income and Program Participation. This analysis compares individuals with annual income below the 2019 U.S. National median income for individuals with a high school diploma aged 25–34 who had positive earnings or reported looking for work in the previous year, according to the Census Bureau’s ACS.

Although enrollment in for-profit and sub-baccalaureate programs has declined following the Great Recession, past patterns suggest that future economic downturns could reverse this trend. For-profit institutions have shown to be more responsive than public and nonprofit institutions to changes in economic conditions²⁶³ and during the COVID–19 pandemic, it was the only sector to see increases in student enrollment.²⁶⁴ Additionally, research shows that reductions in State and local funding for public higher education institutions tend to shift college students into the for-profit sector.²⁶⁵ During economic downturns, this response is especially relevant since State and local funding is procyclical, falling during recessions even as student demand is increasing.²⁶⁶

For-profit institutions that participate in title IV, HEA programs are also more reliant on Federal student aid than public and nonprofit institutions. In recent years, around 70 percent of revenue received by for-profit institutions came from Pell grants and

²⁶³ Deming, D., Goldin, C. & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164. Gilpin, G.A., Saunders, J. & Stoddard, C. (2015). Why Has For-Profit Colleges’ Share of Higher Education Expanded So Rapidly? Estimating the Responsiveness to Labor Market Changes. *Economics of Education Review*, 45, 53–63.

²⁶⁴ Cellini, S.R. (2020). The Alarming Rise in For-Profit College Enrollment. Brookings Institution: Washington, DC.

²⁶⁵ Cellini, S.R. (2009). Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market. *American Economic Journal: Economic Policy*, 1(2), 1–30. Goodman, S. & Volz, A.H. (2020). Attendance Spillovers between Public and For-Profit Colleges: Evidence from Statewide Variation in Appropriations for Higher Education. *Education Finance and Policy*, 15(3), 428–456.

²⁶⁶ Ma, J. & Pender, M. (2022). *Trends in College Pricing and Student Aid 2022*. College Board: New York.

Federal student loans.²⁶⁷ For-profit institutions also have substantially higher tuition than public institutions offering similar degrees. In recent years, average for-profit tuition and fees charged by two-year for-profit institutions were over 4 times the average tuition and fees charged by community colleges.²⁶⁸ Research suggests that Federal student aid supports for-profit expansions and higher prices.²⁶⁹ One study finds that for-profit programs in institutions that participate in title IV, HEA programs charge tuition that is approximately 80 percent higher than tuition charged by programs in the same field and with similar outcomes in nonparticipating for-profit institutions.²⁷⁰

A commonly expressed concern with past GE regulations is that if programs lose title IV, HEA aid eligibility due to the rule’s sanctions this might result in a loss of education options for disadvantaged students. Past research has shown that for-profit institutions do indeed disproportionately enroll students with barriers to postsecondary access—low-income, non-white, and older students, as well as students who are veterans, single parents, or have a

²⁶⁷ Cellini, S. & Koedel, K. (2017). The Case for Limiting Federal Student Aid to For-Profit Colleges. *Journal of Policy Analysis and Management*, 36(4), 934–942.

²⁶⁸ NCES (2022). Digest of Education Statistics (Table 330.10) (available at nces.ed.gov/ipeds/data/digest/d21/tables/dt21_330.10.asp).

²⁶⁹ Cellini, S.R. (2010). Financial Aid and For-Profit Colleges: Does Aid Encourage Entry? *Journal of Policy Analysis and Management*, 29(3), 526–552. Lau, C.V. (2014). The Incidence of Federal Subsidies in For-Profit Higher Education. Unpublished manuscript. Northwestern University: Evanston, IL.

²⁷⁰ Cellini, S.R. & Goldin, C. (2014). Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges. *American Economic Journal: Economic Policy*, 6(4), 174–206.

General Equivalency Degree.²⁷¹ Evidence from prior research and our analyses presented in this RIA, however, suggests that sanctioning low-performing programs would not reduce access to good quality programs.

For example, in the 1990s, sanctions related to high cohort default rates led a large number of for-profit institutions to close, significantly reducing enrollment in this sector.²⁷² Yet, these actions did not reduce access to higher education. Instead, a large share of

students who would have attended a sanctioned for-profit institution instead enrolled in local open access public institutions and, as a result, took on less student debt and were less likely to default.²⁷³ Similar conclusions were reached in recent studies of students who experienced program closures.²⁷⁴ Better evidence is now available on the enrollment outcomes of students who would otherwise attend sanctioned or closed schools than when the 2014 GE

Rule was considered. Further, as shown in the RIA section “Alternative Options Exist for Students to Enroll in High-Value Programs,” most students who enroll in a GE program projected to fail the D/E rates or EP measure have better options available to them at the same or nearby institutions, and the graduates of these programs tend to have higher earnings and less debt.

3. Summary of Comments and Changes From the NPRM

TABLE 1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS

Provision	Regulatory section	Description of change from NPRM
Date, Extent, and Consequence of Eligibility.	§ 600.10(c)	Repositioning § 600.10(c)(1)(v) to § 600.10(c)(3), with a slight rewording for additional clarity.
Definitions	§ 668.2	Updating definition of “cohort period” to extend the earnings measurement period for qualifying graduate programs beyond medical and dental programs. Updating definition of “earnings threshold” to specifically reference Census Bureau data. Updating definition of “earnings threshold” to clarify that national earnings are used if fewer than 50 percent of the students in the program come from the State where the institution is located, rather than where the students are located while enrolled. Updating definition of Institutional Grants and Scholarships for clarity. Adding a new definition of “qualifying graduate program” to establish an extended earnings measurement period for certain graduate programs beyond medical and dental programs. Adding a new definition of “substantially similar program.” Removing references to “title IV loan” and uses “Direct Loan Program loan” that is already defined.
Institutional and Programmatic Information and Student Acknowledgments.	§§ 668.43(d), 668.407, and 668.605.	Specifying that the program information website requirements and the acknowledgment requirements are not applicable until July 1, 2026.
Institutional and Programmatic Information.	§ 668.43(a)(5)(v) and (d)(1).	Removing the requirement for an institution to post a list of States where a program meets or does not meet applicable State licensure requirements, in expectation that this provision will be published under a separate final rule. Revising § 668.43(d) to refer to the Department’s website as the “program information website” rather than the “disclosure website.” We have also made conforming revisions to § 668.605(c)(2) and (3) by changing the reference from “disclosure website” to “program information website.” Revising the list of information items to include a list of the minimum elements that the Secretary must include on the program information website and an example list of supplemental information the Secretary may additionally include.
Financial Value Transparency Scope and Purpose.	§ 668.401	Removing the link to the College Navigator website from the list of required information items. Adding § 668.401(b)(1) to exempt institutions located in U.S. Territories or the freely associated states from the provisions of subpart Q other than reporting requirements under § 668.408, noting that the informational requirements at § 668.43 also continue to apply. Adding § 668.401(b)(2) to exempt from subpart Q institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.
Process for Obtaining Data and Calculating D/E Rates and Earnings Premium Measure.	§ 668.405(b)(1)(iii)	Revising to clarify that an institution can correct the information about the students on the completer list or provide evidence showing that a student should be included or removed from the list no later than 60 days after the date the Secretary provides the list to the institution.
Student Acknowledgments	§ 668.407(a)(1), (b)(3), (c), and (d).	Revising to exempt undergraduate degree programs from the acknowledgment requirements. Revising to require a student in high-debt-burden non-GE program to provide an acknowledgment before the institution enters into an agreement to enroll the student, rather than before the institution may disburse title IV, HEA funds. Revising to clarify that the Department monitors an institution’s compliance with the student acknowledgment requirements through audits, program reviews, or other investigations. Revising to clarify that the acknowledgment requirements apply annually if the program has failing rates for the most recent year calculated, and continue to apply for three years if no new rates are calculated. Revising to specify that the provision of an acknowledgement will not be considered “dispositive” evidence in any borrower defense claim.
Reporting Requirements	§ 668.408(a) and (c)	Revising to limit the reporting requirements to institutions offering any program with at least 30 total completers during the four most recently completed award years. Expanding the transitional reporting and rates option from non-GE programs to all programs.

²⁷¹ Deming, D., Goldin, C. & Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives*, 26(1), 139–164. Cellini, S.R. & Darolia, R. (2015). College Costs and Financial Constraints. In Hershbein, B. & Hollenbeck, K. (ed). *Student Loans and the Dynamics of Debt* (137–174). W.E. Upjohn Institute for Employment Research: Kalamazoo, MI.

²⁷² Darolia, R. (2013). Integrity Versus Access? The Effect of Federal Financial Aid Availability on Postsecondary Enrollment. *Journal of Public Economics*, 106, 101–114.

²⁷³ Cellini, S.R., Darolia, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy*, 12(2), 46–83.

²⁷⁴ See Government Accountability Office (2022). College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges (GAO–22–104403) (www.gao.gov/products/gao-22-104403). State Higher Ed. Executive Officers Ass’n (2022). More than 100,000 Students Experienced an Abrupt Campus Closure Between July 2004 and June 2020 (sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020).

TABLE 1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS—Continued

Provision	Regulatory section	Description of change from NPRM
Gainful Employment Scope and Purpose.	§ 668.601(b)	Clarifying that the transitional reporting and rates option applies for the first six years the regulation is in effect. Adding § 668.601(b)(1) to exempt institutions located U.S. Territories or the freely associated states from the provisions of subpart S. Adding § 668.601(b)(2) to exempt from subpart S institutions that offered no groups of substantially similar programs with 30 or more completers over the four most recently completed award years.
Gainful Employment Criteria	§ 668.602(d) and (g)	Revising to clarify that in determining a program's eligibility, the Secretary disregards any failing D/E rates and earnings premiums that were calculated more than five calculation years prior.
Student Warnings	§ 668.605(h)	Revising to specify that the provision of a warning will not be considered "dispositive" evidence in any borrower defense claim.

General

Comments: One commenter questioned why the Department's RIA data were less complete for nonprofit institutions than similarly provided data under the 2014 GE rules. The commenter also wondered what data motivated the extra regulation of for-profit institutions relative to nonprofit schools.

Discussion: The commenter did not specify how they determined that the data for nonprofit institutions were less complete in the NPRM RIA relative to the 2014 rule. Nonetheless, the Department provided the available data, subject to privacy standards as part of the NPRM. Moreover, the additional scrutiny of for-profit institutions is warranted because for-profit programs have demonstrated particularly poor outcomes. A large body of research provides causal evidence on the many ways students at for-profit institutions are economically disadvantaged upon exiting their institutions, as we described in the "Need for Regulatory Action" section above.

Changes: None.

Comments: A few commenters stated that the NPRM RIA's comparison of failure rates of public and nonprofit certificate programs to those of proprietary programs was misleading because many public and nonprofit programs are too small to have sufficient data to calculate metrics.

Discussion: Under the rule, only programs with sufficient data will be subject to failure. Therefore, the NPRM RIA contained an accurate description of the share of programs that fail.

Changes: None.

Benefits and Costs—RIA

Comments: One commenter questioned whether the benefits of the regulations would exceed the costs, claiming that the in the NPRM, the Department did not provide specific data and evidence about net benefits, did not consider negative impacts on students and institutions, provided an incomplete assessment of costs

associated with implementing the regulations, and did not consider the perspectives of students, institutions, and other stakeholders who would be directly affected by the regulation.

Discussion: The Department disagrees that the NPRM failed to consider these elements. We included extensive discussion of potential impacts on students and institutions (for example, see the "Discussion of Costs, Benefits, and Transfers" in the NPRM). The NPRM also included a robust discussion of the costs associated with implementing the regulations, including discussion of costs associated with the reporting, disclosure, and acknowledgment requirements (see the "Costs to Institutions" section of the NPRM). In addition, the NPRM was issued after a negotiated rulemaking process in which a diverse set of stakeholders participated, including representatives from accrediting agencies, civil rights organizations, consumer advocacy groups, financial aid administrators, institutions of higher education (public four-year and two-year, minority-serving, proprietary, private nonprofit), State attorneys general, and U.S. military service groups.

Changes: None.

Data Used in This RIA

Comments: Several commenters noted that the NPRM RIA considered information that differed in certain ways from the data measurement that the Department proposed to use in the rule, including: that the RIA analyzed programs at the 4-digit CIP code level; used 2010 CIP codes; used data from earlier cohorts; used State-level earnings thresholds even in cases when more than half of a program's students are out-of-State, did not evaluate medical professional programs that have post-graduation residency requirements, and did not provide 4-year completer cohort data. Some commenters further noted that the data used to calculate D/E in the NPRM RIA did not include private education loan data or cap the loan debt

by an amount equivalent to cost of attendance less institutional grants. Some of these commenters claimed that this omission particularly harms cosmetology schools or that the NPRM RIA does not offer institutions a way to fully understand the potential impact of the regulations on their programs.

Discussion: We used the best available data in the NPRM RIA and in the RIA for the final rule to analyze the implications of the rule, and in these, and other comments, commenters did not suggest alternative sources of data that could be used to evaluate the rule proposed in the NPRM or in the final rule. Additionally, we described in detail the differences between data used for modeling and data used in the final rule, and when possible, included a discussion of expected differences in coverage between the NPRM RIA and the final rule. For example, the NPRM RIA estimated that for GE programs, an additional 8 percent of enrollment and 11 percent of programs would likely have metrics computed using a 4-year completer cohort but did not have metrics computed using a 2-year completer cohort. For eligible non-GE programs, the use of four-year cohort rates likely increases coverage rates of enrollment and programs by 13 and 15 percent, respectively.²⁷⁵ To the extent that commenters seek perfect data that perfectly predict the effects of the rule, that is neither feasible nor the applicable legal standard. Further, institutions have ready access to data that would allow them to identify debt levels for students in their programs, and it is not unreasonable to expect institutions to have a sense of students' earnings.

Changes: None.

Comments: One commenter stated their appreciation for providing analysis of programs in 2-year cohorts, but a few commenters were concerned about the lack of information related to 4-year cohorts. A specific concern of the latter/

²⁷⁵ See "Data Used in this RIA" and "Analysis of Data Coverage" from the NPRM.

these commenter(s) was that the RIA in the NPRM might have understated the number of programs that might be affected by the regulations.

Discussion: The data we used in the NPRM RIA was the best data available to analyze the implications of the rule. We included an estimate in the NPRM RIA of the share of enrollment in programs that would be covered under the four-year cohort approach (see, for example, Table 3.2 of the NPRM).

Changes: None.

Comments: One commenter claimed that they were unable to recreate or identify the source data for data used in the NPRM RIA. A few other commenters claimed that the PPD 2022 differed from other data, such as the College Scorecard or previously released data.

Discussion: We fulsomely documented the data used in the NPRM RIA analysis and in supplementary documentation posted on the Department's website and regulations.gov. Under the "Data Used in this RIA" section of the NPRM, the RIA explains that the data used non-public records contained in Department administrative systems, earnings data produced by the U.S. Treasury, and data from the Integrated Postsecondary Education Data System (IPEDS), Postsecondary Education Participants System (PEPS), and the College Scorecard, and further explained, in the following pages, how we constructed each data field. Further, the Data Codebook and Description provide detailed descriptions of the exact source of each variable and differences from previously released data.²⁷⁶

Changes: None.

Comments: One commenter indicated that the 2022 PPD data released along with the NPRM does not match with their college's internal data. The commenter further conducted a survey of some graduates in one their programs and among respondents, found higher median earnings than was included in the PPD. Further, the commenter claimed that the 2022 PPD included more completers than the college's internal data and had a different number of bachelor's programs.

Discussion: The Department used administrative IRS data from tax filings, which we believe to be the most accurate source of data on student earnings available. While graduate surveys can provide useful information about student outcomes, such data can be subject to response bias (and that is

possible in this case where only a portion of borrowers volunteered self-reported earnings information). Related to accuracy of completers and programs, the rule allows institutions to review and correct completer lists to review for and promote accuracy (see § 668.405).

Changes: None.

Comments: Two commenters asserted, for different reasons, that the PPD was in some way flawed. One commenter noted that only a fraction of the programs in the PPD file include data, and that this is too small a fraction of programs nationwide to analyze and use for the basis of a rule.

The other commenter noted that the PPD file contains fewer programs than the equivalent College Scorecard program file, even though they measure the same cohort. The same commenter opined that the PPD was not a valid source of data, because for programs that exist in both data sources, the earnings data are substantially different.

Discussion: The Department understands that not all programs include data that can be analyzed for the purposes of the final rule. However, we believe that the degree to which student enrollment concentrates in larger programs mitigates the concerns noted by the commenter. The number of students who enroll in programs large enough to produce data is the more relevant measure of the rule's effectiveness, in our opinion. As shown in the RIA, we estimate that the majority of enrolled students, approximately 83 percent, are enrolled in programs that would be covered by existing data.

The Department is aware of the differences in how the PPD and the College Scorecard universes of programs and data are constructed. As noted in the rule and in the RIA, the coverage of programs is different, and the two datasets should not be expected to be the same. A primary reason why the PPD has fewer programs is that the sample frame is different: the PPD is limited to programs with completers in the 2015–2017 academic years and who are currently in operation based on the Postsecondary Education Participation System (PEPS) data as of March 25, 2022.

The methodology for calculating median debt differ in the two data sources because in the College Scorecard, median debt is measured only among borrowers, whereas in the PPD programs that have completers who graduate with debt have those students' lack of debt factored into their median debt amounts.

The Department disputes the fact that the earnings measures differ substantially between the College

Scorecard and the PPD. The same data file forms the basis of both the Scorecard and the PPD earnings measures for 3-year earnings among students who are not enrolled. It is worth noting that the not-enrolled population that forms the basis of the 3-year program-level measure in the Scorecard is a different sample of students than the 1- and 4-year measures at the program level, which are calculated only for the working and not-enrolled population of graduates from each program. This may explain any confusion commenters have about comparability of measures, as commenters noted inconsistency across earnings horizons (arguing that the data showed an implausible jump from the three- to four-year measurement period. This disparity results from different measurement populations and is not a sign of mismeasurement. When examining program earnings for the same cohorts and measurement periods for the programs present in both samples, they differ only by a small inflation adjustment that serves to construct the GE measures properly to best approximate the true structure of the rule when implemented. For reasons explained in the NPRM, median debt in the rule (and hence the PPD) is based on all graduates regardless of whether they borrow. Similarly, median earnings are measured using all graduates regardless of whether they are employed.

Changes: None.

4. Analysis of the Financial Value Transparency and GE Regulations

This section presents a detailed analysis of the likely consequences of the Financial Value Transparency and GE provisions of the final regulations.

Methodology

Data Used in This RIA

This section describes the data referenced in this regulatory impact analysis. To generate information on the performance of different postsecondary programs offered in different higher education sectors, the Department relied on data on the program enrollment, demographic characteristics, borrowing levels, post-completion earnings, and borrower outcomes of students who received title IV, HEA aid for their studies. The Department produced program performance information, using measures based on the typical debt levels and post-enrollment earnings of program completers, from non-public records contained in the administrative systems the Department uses to administer the title IV, HEA programs along with earnings data produced by

²⁷⁶ See www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprm-2022ppd-description.pdf and www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprm-2022ppd-codebook.xlsx.

the U.S. Treasury. This performance information was supplemented with information from publicly available sources including the Integrated Postsecondary Education Data System (IPEDS), Postsecondary Education Participants System (PEPS), and the College Scorecard. The data used for the State earnings thresholds come from the Census Bureau's 2019 ACS, while statistics about the price level used to adjust for inflation come from the Bureau of Labor Statistics' Consumer Price Index. This section describes the data used to produce this program performance information and notes several differences from the measures used for this purpose and the D/E rates and earning premium measures set forth in the rule, as well as differences from the data disseminated during negotiated rulemaking. The data described below are referred to as the "2022 Program Performance Data (2022 PPD)," where 2022 refers to the year the programs were indicated as active. The data are unchanged from that used in the NPRM RIA, and those data were released with the NPRM.²⁷⁷

The final rule relies on non-public measures of the cumulative borrowing and post-completion earnings of federally aided title IV, HEA students, including both grant and loan recipients. The Department has information on all title IV, HEA grant and loan recipients at all institutions participating in the title IV, HEA programs, including the identity of the specific programs in which students are enrolled and whether students complete the program. This information is stored in the National Student Loan Data System (NSLDS), maintained by the Department's Office of Federal Student Aid (FSA).

²⁷⁷ To protect student privacy, we applied certain protocols to the publicly released 2022 PPD and therefore that dataset differs somewhat from the 2022 PPD analyzed in this RIA. Such protocols include omitting the values of variables derived from fewer than 30 students. For instance, the title IV enrollment in programs with fewer than 30 students is used to determine the number and share of enrollment in GE programs in this RIA, while the exact program-level enrollment of such programs is omitted in the public 2022 PPD. The privacy protocols are described in the data documentation accompanying the NPRM. The Department would not have reached different conclusions on the impact of the regulation or on the proposed rules if we had instead relied on the privacy-protective dataset, though the Department views analysis based on the 2022 PPD and described in this regulation to provide a more precise representation of such impact. We view the differences in the analyses as substantively minor for purposes of this rulemaking. As described in the final rule, institutions that do not have enough students completing over the most recent four award years to permit the Department to calculate metrics will be exempt—these programs are listed as "no data" in the public PPD.

Using this enrollment and completion information, in conjunction with non-public student loan information also stored in NSLDS, and earnings information obtained from Treasury, the Department calculated annual and discretionary debt-to-earnings (D/E) ratios, or rates, for all title IV, HEA programs. The Department also calculated the median earnings of high school graduates aged 25 to 34 in the labor force in the State where the program is located using public data, which is referred to as the Earnings Threshold (ET). This ET is compared to a program's graduates' annual earnings to determine the Earnings Premium (EP), the extent to which a programs' graduates earn more than the typical high school graduate in the same State. The methodology that was used to calculate D/E rates, the ET, and the EP is described in further detail below. In addition to the D/E rates and earnings data, we also calculated informational outcome measures, including program-level cohort default rates, to evaluate the likely consequences of the final rule.

In our analysis, we identify a program by a unique combination consisting of the first six digits of its institution's Office of Postsecondary Education Identification (OPEID) number, also referred to as the six-digit OPEID, the program's 2010 Classification of Instructional Programs (CIP) code, and the program's credential level. The terms OPEID number, CIP code, and credential level are defined below. Throughout, we distinguish "GE Programs" from those that are not subject to the GE provisions of the final rule, referred to as "non-GE Programs." The 2022 PPD includes information for 155,582 programs that account for more than 19 million title IV, HEA enrollments annually in award years 2016 and 2017. This includes 2,931,000 enrollments in 32,058 GE Programs (certificate programs at all institution types, and degree programs at proprietary institutions) and 16,337,000 enrollments in 123,524 non-GE Programs (degree programs at public and private not-for-profit institutions).

We calculated the performance measures in the 2022 PPD for all programs based on the debt and earnings of the cohort of students who both received title IV, HEA program funds, including Federal student loans and Pell grants, and completed programs during an applicable two-year cohort period. Consistent with the final rule, students who do not complete their program are not included in the calculation of the metrics. The annual loan payment component of the debt-to-earnings formulas for the 2022 PPD D/

E rates was calculated for each program using student loan information from NSLDS for students who completed their program in award years 2016 or 2017 (*i.e.*, between July 1, 2015, and June 30, 2017—we refer to this group as the 16/17 completer cohort). The earnings components of the rates were calculated for each program using information obtained from Treasury for students who completed between July 1, 2014, and June 30, 2016 (the 15/16 completer cohort), whose earnings were measured in calendar years 2018 and 2019.

Programs were excluded from the 2022 PPD if they were operated by an institution that was not currently active in the Department's PEPS system as of March 25, 2022, if the program did not have a valid credential type, or if the program did not have title IV, HEA completers in both the 15/16 and 16/17 completer cohorts.

Consistent with the regulations, the Department computed D/E and EP metrics in the 2022 PPD only for non-exempted programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum cohort size requirements. A detailed analysis of the likely coverage rate under the rule and of the number and characteristics of programs that met the minimum size in the 2022 PPD is included in "Analysis of Data Coverage" below.

We determined, under the provisions in the final regulations for the D/E rates and EP measures, whether each program would "Pass D/E," "Fail D/E," "Pass EP," and "Fail EP" based on its 2022 PPD results, or "No data" if it did not meet the cohort size requirement, was located in Puerto Rico, U.S. Territories and freely associated states, or was a program for which we do not have data because the program has post-graduation residency requirements such that it is evaluated based on a longer earnings periods.²⁷⁸ These program-specific outcomes are then aggregated to determine the fraction of programs that pass or fail either metric or have insufficient data, as well as the enrollment in such programs.

- *Pass D/E:* Programs with an annual D/E earnings rate less than or equal to 8 percent *OR* a discretionary D/E earnings rate less than or equal to 20 percent.

²⁷⁸ This is a simplification. Under the regulation, a "no data" year is not considered passing when determining eligibility for GE programs based on two out of three years. For non-GE programs, passing with data and without data are treated the same for the purposes of the warnings.

- *Fail D/E*: Programs with an annual D/E earnings rate over 8 percent *AND* a discretionary D/E earnings rate over 20 percent.

- *Pass EP*: Programs with median annual earnings greater than the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.

- *Fail EP*: Programs with median annual earnings less than or equal to the median earnings among high school graduates aged 25 to 34 in the labor force in the State in which the program is located.

- *No data*: Programs that had fewer than 30 students in the two-year completer cohorts such that earnings and debt levels could not be determined; exempted programs from Puerto Rico, U.S. Territories and freely associated states; or programs with longer earnings periods due to post-graduation residency requirements.

Under the final regulations, a GE program will become ineligible for title IV, HEA program funds if it fails the D/E rates measure for two out of three consecutive years or fails the EP measure for two out of three consecutive years. GE programs will be required to provide warnings in any year in which the program could lose eligibility based on the next D/E rates or earnings premium measure calculated by the Department. Students at such programs would be required to acknowledge having seen the warning and information about debt and earnings before receiving title IV, HEA funds. Eligible programs (excepting undergraduate degree programs) not meeting the D/E standards would need to have students acknowledge viewing this information before students sign enrollment agreements. These acknowledgment requirements will apply until the program passes the D/E measure, or for three years from the last published rate, whichever is earlier.

The Department analyzed the estimated impact of the final regulations on GE and non-GE programs using the following data elements defined below:

- *Enrollment*: Number of students receiving title IV, HEA program funds for enrollment in a program. To estimate enrollment, we used the count of students receiving title IV, HEA program funds, averaged over award years 2016 and 2017. Since students may be enrolled in multiple programs during an award year, aggregate enrollment across programs will be greater than the unduplicated number of students.

- *OPEID*: Identification number issued by the Department that identifies each postsecondary educational institution (institution) that participates

in the Federal student financial assistance programs authorized under title IV of the HEA.

- *CIP code*: Identification code from the Department's National Center for Education Statistics' (NCES) Classification of Instructional Programs, which is a taxonomy of instructional program classifications and descriptions that identifies instructional program specialties within educational institutions. The rule will define programs using six-digit CIP codes, but due to data limitations, the statistics used in this RIA are measured using four-digit codes to identify programs.²⁷⁹ We used the 2010 CIP code instead of the 2020 codes to align with the completer cohorts used in this analysis.

- *Control*: The control designation for a program's institution—public, private nonprofit, private for-profit (proprietary), foreign nonprofit, and foreign for-profit—using PEPS control data as of March 25, 2022.

- *Credential level*: A program's credential level—undergraduate certificate, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, first professional degree, or post-graduate certificate.

- *Institution predominant degree*: The type designation for a program's institution which is based on the predominant degree the institution awarded in IPEDS and reported in the College Scorecard: less than 2 years, 2 years, or 4 years or more.

- *State*: Programs are assigned to a U.S. State, DC, or territory based on the State associated with the main institution.

The information contained in the 2022 PDD and used in the analysis necessarily differs from what will be used to evaluate programs under the final rule in a few ways due to certain information not being currently collected in the same form as it would under the final rule. These include:

- 4-digit CIP code is used to define programs in the 2022 PPD, rather than 6-digit CIP code. Program earnings are not currently collected at the 6-digit CIP code level, but will be under the final rule. Furthermore, the 2022 PPD use 2010 CIP codes to align with the completer cohorts used in the analysis,

²⁷⁹ In many cases the loss of information from conducting analysis at a four- rather than six-digit CIP code is minimal. According to the Technical Documentation: College Scorecard Data by Field of Study, 70 percent of credentials conferred were in four-digit CIP categories that had only one six-digit category with completers at an institution. The 2015 official GE rates can be used to examine the extent of variation in program debt and earnings outcomes across 6-digit CIP programs within the same credential level and institution.

but programs will be defined using the 2020 CIP codes under the final rule;

- Unlike the final rule, the total loan debt associated with each student is not capped at an amount equivalent to the program's tuition, fees, books, and supplies in the 2022 PPD, nor does debt include institutional and other private debt. Doing so requires additional institutional reporting of relevant data items not currently available to the Department. In the 2014 Prior Rule, using information reported by institutions, the tuition and fees cap was applied to approximately 15 percent of student records for the 2008–2009 2012 D/E rates cohort, though this does not indicate the share of programs whose median debt would be altered by the cap.

- D/E rates using earnings levels measured in calendar years 2018 and 2019 would ideally use debt levels measured for completers in 2015 and 2016. Since program level enrollment data are more accurate for completers starting in 2016, we use completers in 2016 and 2017 to measure debt. We measure median debt levels and assume completers in the 2015 and 2016 cohorts would have had total borrowing that was the same in real terms (*i.e.*, we use the CPI to adjust their borrowing levels to estimate what the earlier cohort would have borrowed in nominal terms). This use of one cohort to measure earnings outcomes and another to measure debt necessarily reduces the estimated coverage in the 2022 PPD to a lower level than will be experienced in practice, as we describe in more detail below. Finally, the methodology used to assign borrowing to particular programs in instances where a borrower may be enrolled in multiple programs is different in the 2022 PPD than the methodology that would be used in the final rule (which is the same as that used in the 2014 Prior Rule);

- Medical and dental professional programs, and graduate mental health programs that lead to licensure, are not evaluated because earnings six years after completion are not available. The earnings and debt levels of these programs are set to missing and not included in the tabulations presented here;

- 150 percent of the Federal Poverty Guideline is used to define the ET for institutions in foreign institutions in the 2022 PPD, rather than a national ET;

- The final rule will use a national ET if more than half of a program's students are out-of-state, but the 2022 PPD uses an ET determined by the State an institution is located;

- Programs at institutions that have merged with other institutions since

2017 are excluded, but these programs' enrollment will naturally be incorporated into the merged institution when the final rule goes into effect.

- Under the final rule, if the two-year completer cohort has too few students to publish debt and earnings outcomes, but the four-year completer cohort has a sufficient number of students, then debt and earnings outcomes would be calculated for the four-year completer cohort. This was not possible for the 2022 PPD, so some programs with no data in our analysis would have data to evaluate performance under the rule.

The 2022 PPD also differ from those published in the Negotiated Rulemaking data file in several ways. The universe of programs in the previously published Negotiated Rulemaking data file were based, in part, on the College Scorecard universe which included programs as they are reported to IPEDS, but not necessarily to NSLDS. IPEDS is a survey, so institutions may report programs (degrees granted by credential level and CIP code) differently in IPEDS than is reflected in NSLDS. To reflect the impact of the rule more accurately, the universe of the 2022 PPD is based instead on NSLDS records because NSLDS captures programs as reflected in the data systems used to administer title IV, HEA aid. Nonetheless, the 2022 PPD accounts for the same loan volume reflected in the Negotiated Rulemaking data file. In addition, the Negotiated Rulemaking data file included programs that were based on a previous version of College Scorecard prior to corrections made to resolve incorrect institution-reported information in underlying data sources.

Methodology for D/E Rates Calculations

The D/E rates measure is comprised of two debt-to-earnings ratios, or rates. The first, the annual earnings rate, is based on annual earnings, and the second, the discretionary earnings rate, is based on discretionary earnings. These two components together define a relationship between the maximum typical amount of debt program graduates should borrow based on the programs' graduates' typical earnings. Both conceptually and functionally the two metrics operate together, and so should be thought of as one "debt to earnings (D/E)" metric. The formulas for the two D/E rates are:

$$\begin{aligned} \text{Annual Earnings Rate} &= (\text{Annual Loan Payment}) / (\text{Annual Earnings}) \\ \text{Discretionary Earnings Rate} &= (\text{Annual Loan Payment} / (\text{Discretionary Earnings})) \end{aligned}$$

A program's annual loan payment, the numerator in both rates, is the median

annual loan payment of the 2016–2017 completer cohort. This loan payment is calculated based on the program's cohort median total loan debt at program completion, including non-borrowers, subject to assumptions on the amortization period and interest rate. Cohorts' median total loan debt at program completion were computed as follows.

- Each student's total loan debt includes both FFEL and Direct Loans. Loan debt does not include PLUS Loans made to parents, Direct Unsubsidized Loans that were converted from TEACH Grants, private loans, or institutional loans that the student received for enrollment in the program.

- In cases where a student completed multiple programs at the same institution, all loan debt is attributed to the highest credentialed program that the student completed, and the student is not included in the calculation of D/E rates for the lower credentialed programs that the student completed.

- The calculations exclude students whose loans were in military deferment, or who were enrolled at an institution of higher education for any amount of time in the earnings calendar year, or whose loans were discharged because of disability or death.

The median annual loan payment for each program was derived from the median total loan debt by assuming an amortization period and annual interest rate based on the credential level of the program. The amortization periods used were:

- 10 years for undergraduate certificate, associate degree, post-baccalaureate certificate programs, and graduate certificate programs;
- 15 years for bachelor's and master's degree programs;
- 20 years for doctoral and first professional degree programs.

The amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans. These amortization rates mirror those used in the 2014 Prior Rule, which were based on Department analysis of loan balances and the differential use of repayment plan periods by credential level at that time.²⁸⁰ The interest rates used were:

- 4.27 percent for undergraduate programs;
- 5.82 percent for graduate programs.

For both undergraduate and graduate programs, the rate used is the average interest rate on Federal Direct Unsubsidized loans over the three years prior to the end of the applicable cohort period, in this case, the average rate for loans disbursed between the beginning of July 2013 and the end of June 2016.

The denominators for the D/E rates are two different measures of student earnings. Annual earnings are the median total earnings in the calendar year three years after completion, obtained from the U.S. Treasury. Earnings were measured in calendar years 2018 and 2019 for completers in award years 2014–2015 and 2015–2016, respectively, and were converted to 2019 dollars using the Consumer Price Index for all Urban Consumers (CPI-U). Earnings are defined as the sum of wages and deferred compensation for all W-2 forms plus self-employment earnings from Schedule SE.²⁸¹ Graduates who were enrolled in any postsecondary program during calendar year 2018 (2014–2015 completers) or 2019 (2015–2016 completers) are excluded from the calculation of earnings and the count of students. Discretionary earnings are equal to annual earnings, calculated as above, minus 150 percent of the Federal Poverty Guidelines for a single person, which for 2019 is earnings in excess of \$18,735.

Professional programs in Medicine (MD) and Dentistry (DDS), and mental health graduate programs that lead to clinical licensure will have earnings measured over a longer time horizon to accommodate lengthy post-graduate internship training, where earnings are likely much lower three years after graduation than they would be even a few years further removed from completion.²⁸² Since longer horizon earnings data are not currently available, earnings for these programs were set to missing and treated as if they lacked sufficient number of completers to be measured.

Methodology for EP Rate Calculation

The EP measures the extent to which a program's graduates earn more than the typical high school graduate in the same State. The Department first calculated the ET, which is the median

²⁸¹ See Technical Documentation: College Scorecard Data by Field of Study.

²⁸² For example, the average medical resident earns between roughly \$62,000 and \$67,000 in the first three years of residency, according to the Association of American Medical Colleges (AAMC) Survey of Resident/Fellow Stipends and Benefits, and the mean composition for physicians is \$260,000 for primary care and \$368,000 for specialists, according to the Medscape Physician Compensation Report.

²⁸⁰ See 79 FR 64939–40.

earnings of high school graduates in the labor force in each State where the program is located. The ET is adjusted for differences in high school earnings across States and over time so it naturally accounts for variations across these dimensions to reflect what workers would be expected to earn in the absence of postsecondary participation. The ET is computed as the median annual earnings among respondents aged 25–34 in the ACS who have a high school diploma or GED, but no postsecondary education, and who are in the labor force when they are interviewed, indicated by working or looking for and being available to work. This computation method yields a lower ET that is lower than the method proposed during negotiated rulemaking, which would compute median annual earnings among respondents aged 25–34 in the ACS who have a high school diploma or GED, but no postsecondary education, and who reported working (*i.e.*, having positive earnings) in the year prior to being surveyed. Table 4.1 below shows the ET for each State (along with the District of Columbia) in 2019. The ET ranges from \$31,294 (North Dakota) to \$20,859 (Mississippi). The threshold for institutions outside the United States is \$18,735. We provide evidence in support of the chosen threshold below. Estimates of the impact of the regulations using these alternative thresholds are presented in the “Regulatory Alternatives Considered” section.

TABLE 4.1—EARNINGS THRESHOLDS BY STATE, 2019

	Earnings threshold, 2019
State of Institution:	
Alabama	22,602
Alaska	27,489
Arizona	25,453
Arkansas	24,000
California	26,073

TABLE 4.1—EARNINGS THRESHOLDS BY STATE, 2019—Continued

	Earnings threshold, 2019
Colorado	29,000
Connecticut	26,634
Delaware	26,471
District of Columbia	21,582
Florida	24,000
Georgia	24,435
Hawaii	30,000
Idaho	26,073
Illinois	25,030
Indiana	26,073
Iowa	28,507
Kansas	25,899
Kentucky	24,397
Louisiana	24,290
Maine	26,073
Maryland	26,978
Massachusetts	29,830
Michigan	23,438
Minnesota	29,136
Mississippi	20,859
Missouri	25,000
Montana	25,453
Nebraska	27,000
Nevada	27,387
New Hampshire	30,215
New Jersey	26,222
New Mexico	24,503
New York	25,453
North Carolina	23,300
North Dakota	31,294
Ohio	24,000
Oklahoma	25,569
Oregon	25,030
Pennsylvania	25,569
Rhode Island	26,634
South Carolina	23,438
South Dakota	28,000
Tennessee	23,438
Texas	25,899
Utah	28,507
Vermont	26,200
Virginia	25,569
Washington	29,525
West Virginia	23,438
Wisconsin	27,699
Wyoming	30,544
Foreign Institutions	18,735

The EP is computed as the difference between Annual Earnings and the ET:

$$\text{Earnings Premium} = (\text{Annual Earnings}) - (\text{Earnings Threshold})$$

Where the Annual Earnings is computed as above, and the ET is assigned for the State in which the program is located. For foreign institutions, 150 percent of the Federal Poverty Guideline for the given year is used as the ET because comparable information about high school graduate earnings is not available.

The Department conducted several analyses to support the decision of the particular ET chosen. The discussion here focuses on undergraduate certificate programs, which our analysis below suggests is the sector where program performance results are most sensitive to the choice of ET.

First, based on student age information available from students' Free Application for Federal Student Aid (FAFSA) data, we estimate that the typical undergraduate program graduate three years after completion, when their earnings are measured, would be 30 years old. The average age of students three years after completion for undergraduate certificate programs is 31 years, while for associate programs it is 30, bachelor's 29, master's 33, doctoral 38, and professional programs 32. There are very few Post-BA and Graduate Certificate programs (162 in total) and the average ages when their earnings are measured are 35 and 34, respectively.²⁸³

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²⁸³ Age at earnings measurement is not contained in the data, so we estimate it with age at FAFSA filing immediately before program enrollment plus typical program length (1 for certificate, 2 for Associate programs, 4 for bachelor's programs) plus 3 years. To the extent that students take longer to complete their programs, the average age will be even older than what is reported here. Using this approach, the mean age when earnings are likely to be measured in programs with at least 30 students is 30.34 across all undergraduate programs; the mean for undergraduate certificate students is 30.42.

Average Age by CIP Code, UG For-profit Certificate Programs

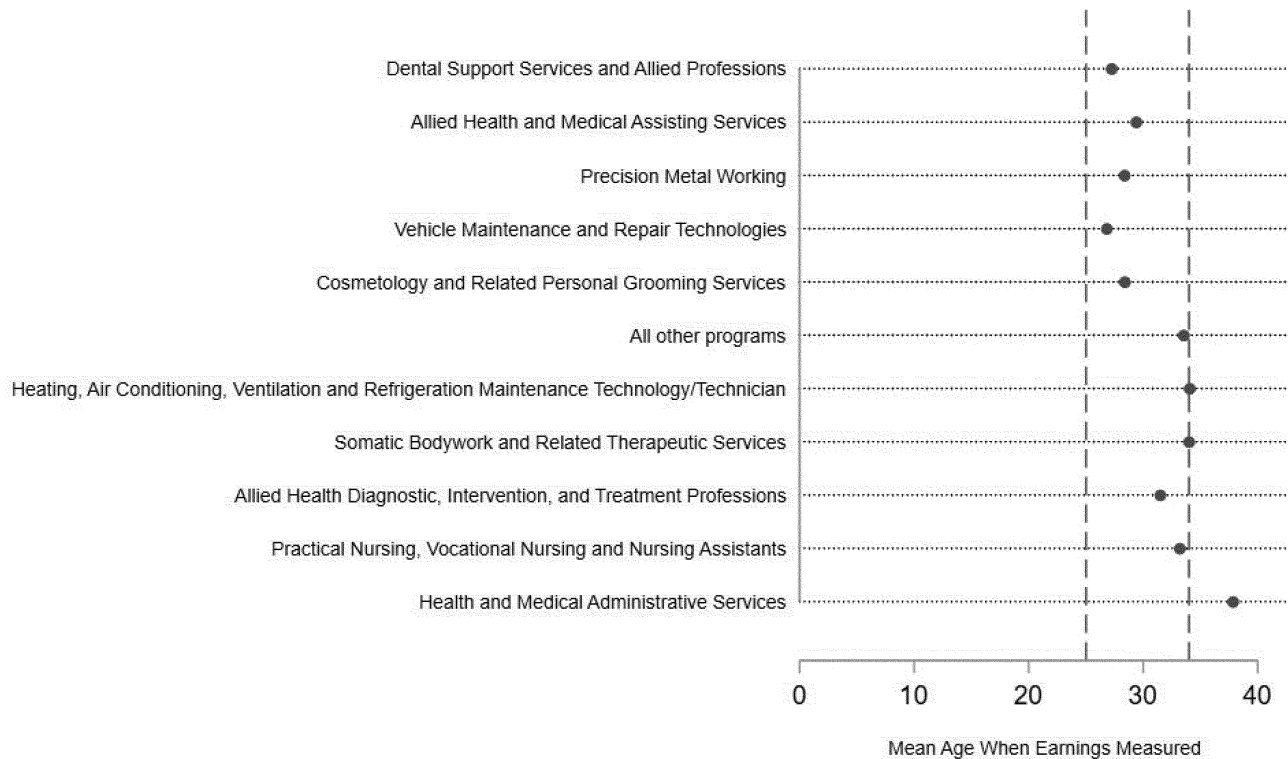


Figure 4.1. Mean Age When Earnings are Measured, UG For-Profit Certificate Programs

Figure 4.1 shows the average estimated age for for-profit certificate holders 3 years after completion, when earnings would be measured, for the 10 most common undergraduate certificate programs (and an aggregate “other” category). All credentials have an average age that falls within or above the range of ages used to construct the earnings threshold. In cases where the average age falls above this range, our earnings threshold is lower than it would be if we adjusted the age band use to match the programs’ completers ages.

Second, the ET is typically less than the average pre-program income of program entrants, as measured in their FAFSA. Figure 4.2 shows average pre-program individual income for students at these same types of certificate programs, including any dependent and independent students that had

previously been working.²⁸⁴ Figure 4.2 also plots the ET and the average post-program median earnings for programs under consideration. The program-average share of students used to compute pre-program income is also reported in parentheses.²⁸⁵ Pre-program

²⁸⁴ To exclude workers who are minimally attached to the labor force or in non-covered employment, the Census Postsecondary Employment Outcomes data requires workers to have annual earnings greater than or equal to the annual equivalent of full-time work at the prevailing Federal minimum wage and at least three quarters of non-zero earnings. (lehd.ces.census.gov/data/pseo_documentation.html). We impose a similar restriction, including only those students whose pre-program earnings are equivalent to full-time work for three quarters at the Federal minimum wage. We only compute average pre-program income if at least 30 students meet this criteria.

²⁸⁵ Across undergraduate certificate programs for which the pre-program income measure was calculated, the average share of students meeting the criteria is 41 percent (weighting each program equally) or 38 percent (weighting programs by title IV, HEA enrollment). Given incomplete coverage and the potential for non-random selection into the

income falls above or quite close to the ET for most types of certificate programs. Furthermore, the types of certificate programs that we show as having very high failure rates—Cosmetology and Somatic Bodywork (massage), for example—are unusual in having very low post-program earnings compared to other programs that have similar pre-program income.

We view this as suggestive evidence that the ET chosen provides a reasonable, but conservative, guide to the minimum earnings that program graduates should be expected to obtain.²⁸⁶

sample measuring pre-program income, we view this analysis as only suggestive.

²⁸⁶ The earnings of 25 to 34 high school graduates used to construct the ET (similar in age to program completers 3 years after graduation) should be expected to exceed pre-program income because the former likely has more labor force experience than the latter. Therefore, the comparison favors finding that the ET exceeds pre-program income. The fact that pre-program income generally exceeds the ET suggests that the ET is conservative.

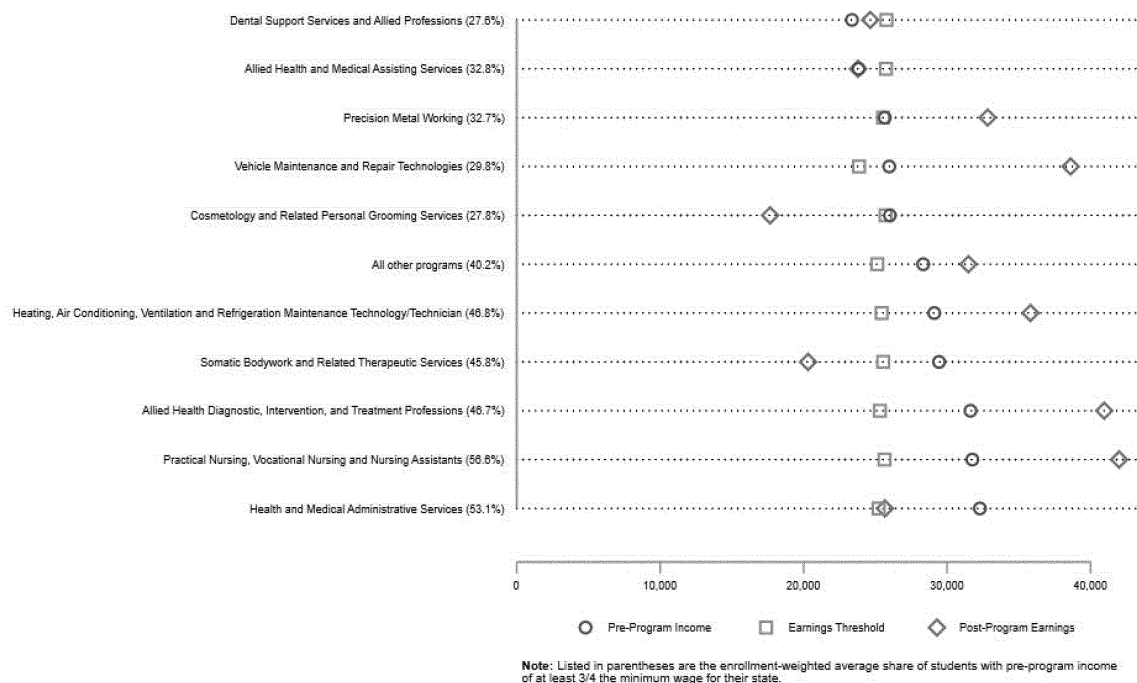


Figure 4.2 Average Income Before Program and Earnings After Program, For-Profit UG Certificate Programs

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Analysis of Data Coverage

This section begins with a presentation of the Department's estimate of the share of enrollment and programs that would meet the n-size requirement and be evaluated under the rule. We assembled data on the number of completers in the two-year cohort period (AYs 2016–2017) and total title IV, HEA enrollment for programs defined at the six-digit OPEID, credential level, and six-digit CIP code from NSLDS. This is the level of aggregation that will be used in the final rule. Total title IV, HEA enrollment at this same level of disaggregation was also collected. Deceased students and students enrolled during the earnings measurement rule will be excluded from the earnings sample under the final rule. We therefore impute the number of completers in the earning sample by multiplying the total completer count in our data by 82 percent, which is the median ratio of non-enrolled earning count to total completer count derived

from programs defined at a four-digit CIP code level.

Table 4.2 below reports the share of title IV, HEA enrollment and programs that would have metrics computed under an n-size of 30 and using six-digit CIP codes to define programs. We estimate that 75 percent of GE enrollment and 15 percent of GE programs would have sufficient n-size to have metrics computed with a two-year cohort. An additional 8 percent of enrollment and 11 percent of programs have an n-size of between 15 and 29 and would be likely have metrics computed using a four-year completer cohort. The comparable rates for eligible non-GE programs are 69 percent of enrollment and 19 percent of programs with a n-size of 30 and using two-year cohort metrics, with the use of four-year cohort rates likely increasing these coverage rates of enrollment and programs by 13 and 15 percent, respectively.

Table 4.2 also reports similar estimates aggregating programs to a four-digit CIP code level. Coverage does not diminish dramatically (3–5 percentage points) when moving from

four-digit CIP codes, as presented in the 2022 PPD, to six-digit CIP codes to define programs.

We note that the high coverage of title IV, HEA enrollment relative to title IV, HEA programs reflects the fact that there are many very small programs with only a few students enrolled each year. For example, based on our estimates, more than half of all programs (defined at six-digit CIP code) have fewer than five students completing per year and about twenty percent have fewer than five students enrolled each year. The Department believes that the coverage of students based on enrollment is sufficiently high to generate substantial net benefits and government budget savings from the policy, as described in “Net Budget Impacts” and “Accounting Statement” below. We believe that the extent to which enrollment is covered by the final rule is the appropriate measure on which to focus coverage analysis on because the benefits, costs, and transfers associated with the policy almost all scale with the number of students (enrollment or completions) rather than the number of programs.

TABLE 4.2—SHARE OF ENROLLMENT AND PROGRAMS MEETING SAMPLE SIZE RESTRICTIONS, BY CIP CODE LEVEL

	Enrollment		Programs	
	CIP4	CIP6	CIP4	CIP6
GE Programs:				
n-size = 15	0.86	0.83	0.29	0.26
n-size = 30	0.79	0.75	0.18	0.15
Non-GE Programs:				
n-size = 15	0.85	0.82	0.39	0.34
n-size = 30	0.74	0.69	0.23	0.19

Notes: Average school-certified enrollment in AY1617 is used as the measure of enrollment, but the 2022 PPD analyzed in the RIA uses total (certified and non-certified) enrollment, so coverage rates will differ. Non-enrolled earnings count for AY1617 completers is not available at a six-digit CIP level (for any n-size) or at a four-digit CIP level (for n-size = 15). Therefore, non-enrolled earnings counts are imputed based on the median ratio of non-enrolled earnings count to total completer counts at the four-digit CIP level where available. This median ratio is multiplied by the actual completer count for AY1617 at the four- and six-digit CIP level for all programs to determine the estimated n-size.

The rest of this section describes coverage rates for programs as they appear in the 2022 PPD to give context for the numbers presented in the RIA. Again, the analyses above are the better guide to the coverage of metrics we are publishing under the rule. The coverage in the 2022 PPD is lower than that reported in Table 4.2, due to differences in data used and because the 2022 PPD does not apply the four-year cohort period “look back” provisions and instead only uses two-year cohorts.²⁸⁷

Tables 4.3a and 4.3b report the share of non-GE and GE enrollment and programs with valid D/E rates and EP rates in the 2022 PPD, by control and

credential level.²⁸⁸ For Non-GE programs, metrics could be calculated for about 62 percent of enrollment who attended about 18 percent of programs. Coverage is typically highest for public bachelor’s degree programs and professional programs at private nonprofit institutions. Doctoral programs in either sector are the least likely to have sufficient size to compute performance metrics. Programs at foreign institutions are very unlikely to have a sufficient number of completers.

Overall, about 66 percent of title IV, HEA enrollment is in GE programs that have a sufficient number of completers to allow the Department to construct

both valid D/E and EP rates in the 2022 PPD. This represents about 13 percent of GE programs. Note that a small number of programs have an EP metric computed but a D/E metric is not available because there are fewer than 30 completers in the two-year debt cohort. Coverage is typically higher in the proprietary sector—we are able to compute D/E or EP metrics for programs accounting for about 87 percent of enrollment in proprietary undergraduate certificate programs. Comparable rates are about 62 percent and 22 percent of enrollment in the nonprofit and public undergraduate certificate sectors, respectively.

TABLE 4.3a—PERCENT OF PROGRAMS AND ENROLLMENT IN PROGRAMS WITH VALID D/E AND EP INFORMATION BY CONTROL AND CREDENTIAL LEVEL
[Non-GE programs]

	Data availability category					
	Has both D/E and EP		Has EP only		Does not have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public:						
Associate	11.6	55.8	0.3	0.3	88.1	43.9
Bachelor’s	39.3	74.3	0.5	0.2	60.2	25.5
Master’s	14.1	50.7	0.7	0.9	85.2	48.5
Doctoral	2.8	21.0	0.3	0.7	96.9	78.4
Professional	37.3	55.0	0.7	0.6	62.0	44.4
Private, Nonprofit:						
Associate	12.6	61.9	0.4	0.1	87.0	38.0
Bachelor’s	13.4	50.6	0.3	0.4	86.3	49.1
Master’s	18.3	60.5	0.9	0.9	80.8	38.6
Doctoral	6.9	45.8	0.3	1.9	92.8	52.3
Professional	42.9	74.4	1.9	0.8	55.2	24.8
Foreign Private:						
Associate					100.0	100.0
Bachelor’s	0.1	1.2			99.9	98.8
Master’s	0.3	4.6	0.1	0.4	99.6	95.0
Doctoral					100.0	100.0
Professional	3.4	20.7	1.1	3.9	95.5	75.4
Total:						

²⁸⁷ Unlike the final rule, the 2022 PPD also combines earnings and debt data from two different (but overlapping) two-year cohorts. Alternatively, the calculations in Table 4.2 use information for a single two-year completer cohort for both earnings and debt, as the rule would do, and therefore

provides a more accurate representation of the expected overall coverage. A second difference between the coverage estimates in Table 4.2 and that in the 2022 PPD has to do with different data sources that result in slightly different estimates of enrollment coverage between the two sources.

²⁸⁸ Programs located in U.S. Territories and freely associated states are included in this table but are considered as having no available data, which slightly underestimates the enrollment and program coverage estimates provided.

TABLE 4.3a—PERCENT OF PROGRAMS AND ENROLLMENT IN PROGRAMS WITH VALID D/E AND EP INFORMATION BY CONTROL AND CREDENTIAL LEVEL—Continued
[Non-GE programs]

	Data availability category					
	Has both D/E and EP		Has EP only		Does not have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Total	17.7	61.3	0.4	0.3	81.9	38.4

TABLE 4.3b—PERCENT OF PROGRAMS AND ENROLLMENT IN PROGRAMS WITH VALID D/E AND EP INFORMATION BY CONTROL AND CREDENTIAL LEVEL
[GE programs]

	Data availability category					
	Has both D/E and EP		Has EP only		Does not have EP or D/E	
	Programs	Enrollees	Programs	Enrollees	Programs	Enrollees
Public:						
UG Certificates	4.8	21.4	0.3	0.4	94.9	78.2
Post-BA Certs	0.9	7.0	0.1	0.2	99.0	92.7
Grad Certs	2.7	21.7	0.2	1.3	97.1	77.0
Private, Nonprofit:						
UG Certificates	12.4	61.5	0.5	0.1	87.1	38.4
Post-BA Certs	0.7	3.8	1.0	2.5	98.3	93.8
Grad Certs	3.9	25.6	0.4	1.1	95.8	73.4
Proprietary:						
UG Certificates	50.8	87.0	1.4	0.4	47.8	12.7
Associate	34.9	84.4	2.3	0.7	62.9	15.0
Bachelor's	38.5	91.6	1.3	0.6	60.3	7.8
Post-BA Certs	8.7	62.2			91.3	37.8
Master's	40.6	89.6	1.9	0.3	57.5	10.1
Doctoral	32.5	68.7	0.8	3.3	66.7	28.0
Professional	31.0	65.1	3.4	21.2	65.5	13.7
Grad Certs	16.1	66.8	4.8	1.1	79.0	32.2
Total:						
Total	12.7	65.0	0.6	0.6	86.6	34.4

Explanation of Terms

While most analysis will be simple cross-tabulations by two or more variables, we use linear regression analysis (also referred to as “ordinary least squares”) to answer some questions about the relationship between variables holding other factors constant. Regression analysis is a statistical method that can be used to measure relationships between variables. For instance, in the demographic analysis, the demographic variables we analyze are referred to as “independent” variables because they represent the potential inputs or determinants of outcomes or may be proxies for other factors that influence those outcomes. The annual debt to earnings (D/E) rate and earnings premium (EP) are referred to as “dependent” variables because they are the variables for which the relationship with the independent variables is examined. The output of a regression analysis contains several relevant points

of information. The “coefficient,” also known as the point estimate, for each independent variable is the average amount that a dependent variable is estimated to change with a one-unit change in the associated independent variable, holding all other independent variables included in the model constant. The standard error of a coefficient is a measure of the precision of the estimate. The ratio of the coefficient and standard error, called a “t-statistic” is commonly used to determine whether the relationship between the independent and dependent variables is “statistically significant” at conventional levels.²⁸⁹ If an estimated coefficient is imprecise (*i.e.*, it has a large standard error relative to the coefficient), it may not be a reliable measure of the underlying relationship. Higher values of the t-

²⁸⁹ We use significance level, or alpha, of 0.05 when assessing the statistical significance in our regression analysis.

statistic indicate a coefficient is more precisely estimated. The “R-squared” is the fraction of the variance of the dependent variable that is statistically explained by the independent variables.

Results of the Financial Value Transparency Measures for Programs Not Covered by Gainful Employment

In this subsection we examine the results of the analysis of the transparency provisions of the final regulations for the 123,524 non-GE programs. The analysis is focused on results for a single set of financial-value measures—approximating rates that would have been released in 2022 (with some differences, described above). Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests and would not have these metrics published, we retain these programs in our analysis and list them in the tables as “No Data” to provide a more complete view of the

distribution of enrollment and programs across the D/E and EP metrics.

Tables 4.4 and 4.5 report the results for non-GE programs by control and credential level. Graduate programs with failing D/E metrics are required to have students acknowledge having seen the program outcome information before prospective students can sign enrollment agreements with an institution. Students at non-GE programs that do not pass the earnings premium metric are not subject to the student acknowledgment requirement, however, for informational purposes, we report rates of passing this metric for

non-GE programs as well. We expect performance on the EP metric contained on the ED-administered program information website to be of interest to students even if it is not part of the acknowledgment requirement. This analysis shows that:

- 842 public and 640 nonprofit degree programs (representing 1.2 and 1.5 percent of programs and 4.6 and 6.6 percent of enrollment, respectively) would fail at least one of the D/E or EP metrics.
- At the undergraduate level, failure of the EP metric is most common at associate degree programs, whereas

failure of the D/E metric is relatively more common among public bachelor's degree programs and at nonprofit associate degree programs.

- Failure for graduate programs is almost exclusively due to the failure of the D/E metric and is most prominent for professional programs at private, nonprofit institutions.

- In total, 125,600 students (1.1 percent) at public institutions and 231,100 students (5.8 percent) at nonprofit institutions are in programs with failing D/E metrics.

TABLE 4.4—NUMBER AND PERCENT OF TITLE IV, HEA ENROLLMENT IN NON-GE BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Percent of enrollment					Number of enrollments				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
Associate	44.1	48.1	0.4	0.2	7.3	2,425,300	2,641,900	19,900	9,800	400,000
Bachelor's	25.9	72.3	1.1	0.2	0.5	1,502,200	4,195,900	63,000	10,300	29,400
Master's	49.4	49.4	1.2	0.0	0.0	375,800	375,400	9,000	300	0
Doctoral	79.0	18.4	2.6	0.0	0.0	114,800	26,700	3,800	0	0
Professional	45.1	47.4	7.5	0.0	0.0	57,400	60,400	9,600	0	0
Total	36.3	59.2	0.9	0.2	3.5	4,475,500	7,300,200	105,300	20,300	429,400
Private, Nonprofit:										
Associate	40.6	36.2	8.0	14.5	0.6	108,500	96,600	21,500	38,600	1,700
Bachelor's	51.4	44.8	1.7	1.0	1.2	1,362,100	1,186,900	44,800	26,800	30,600
Master's	40.2	55.6	3.8	0.3	0.1	320,300	442,300	30,400	2,400	800
Doctoral	54.2	30.3	15.4	0.1	0.0	77,400	43,300	22,000	200	0
Professional	26.7	39.0	34.1	0.0	0.2	34,900	50,900	44,400	0	200
Total	47.7	45.6	4.1	1.7	0.8	1,903,200	1,820,000	163,000	68,100	33,300
Foreign Private:										
Associate	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0
Bachelor's	98.8	0.0	0.0	1.2	0.0	5,400	0	0	100	0
Master's	95.4	2.8	1.8	0.0	0.0	8,600	300	200	0	0
Doctoral	100.0	0.0	0.0	0.0	0.0	2,800	0	0	0	0
Professional	79.3	0.0	20.7	0.0	0.0	1,200	0	300	0	0
Total	95.7	1.3	2.6	0.4	0.0	18,100	300	500	100	0
Total:										
Associate	44.0	47.5	0.7	0.8	7.0	2,533,800	2,738,500	41,400	48,400	401,700
Bachelor's	33.9	63.6	1.3	0.4	0.7	2,869,700	5,382,800	107,800	37,200	60,000
Master's	45.0	52.2	2.5	0.2	0.1	704,700	817,900	39,500	2,700	800
Doctoral	67.0	24.1	8.9	0.1	0.0	194,900	70,000	25,800	200	0
Professional	36.1	42.9	20.9	0.0	0.1	93,500	111,300	54,300	0	200
Total	39.2	55.8	1.6	0.5	2.8	6,396,700	9,120,500	268,800	88,500	462,700

Note: Enrollment counts rounded to the nearest 100.

TABLE 4.5—NUMBER AND PERCENT OF NON-GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP Only	
	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N
Public:										
Associate	88.5	24,165	9.9	2,693	0.1	24	0.1	19	1.5	411
Bachelor's	61.0	14,855	37.7	9,167	0.7	164	0.2	48	0.4	104
Master's	86.0	12,547	13.6	1,990	0.3	41	0.0	3	0.0	1
Doctoral	97.2	5,562	2.7	153	0.2	9	0.0	0	0.0	0
Professional	63.9	363	32.9	187	3.2	18	0.0	0	0.0	0
Total	79.3	57,492	19.6	14,190	0.4	256	0.1	70	0.7	516
Private, Nonprofit:										
Associate	88.3	2,049	8.9	206	1.2	29	1.3	30	0.3	7
Bachelor's	87.0	25,891	12.1	3,608	0.4	119	0.2	69	0.2	65
Master's	82.2	8,513	16.1	1,665	1.6	162	0.2	17	0.0	5
Doctoral	93.1	2,658	5.0	142	1.8	52	0.1	2	0.0	0
Professional	58.6	289	24.5	121	16.2	80	0.0	0	0.6	3
Total	86.1	39,400	12.5	5,742	1.0	442	0.3	118	0.2	80
Foreign Private:										
Associate	100.0	18	0.0	0	0.0	0	0.0	0	0.0	0

TABLE 4.5—NUMBER AND PERCENT OF NON-GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL—Continued

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP Only	
	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N
Bachelor's	99.9	1,227	0.0	0	0.0	0	0.1	1	0.0	0
Master's	99.7	3,067	0.1	4	0.1	3	0.0	0	0.0	1
Doctoral	100.0	793	0.0	0	0.0	0	0.0	0	0.0	0
Professional	97.1	101	0.0	0	2.9	3	0.0	0	0.0	0
Total	99.8	5,206	0.1	4	0.1	6	0.0	1	0.0	1
Total:										
Associate	88.5	26,232	9.8	2,899	0.2	53	0.2	49	1.4	418
Bachelor's	75.9	41,973	23.1	12,775	0.5	283	0.2	118	0.3	169
Master's	86.1	24,127	13.1	3,659	0.7	206	0.1	20	0.0	7
Doctoral	96.2	9,013	3.1	295	0.7	61	0.0	2	0.0	0
Professional	64.6	753	26.4	308	8.7	101	0.0	0	0.3	3
Total	82.7	102,098	16.1	19,936	0.6	704	0.2	189	0.5	597

Tables 4.6 and 4.7 report results by credential level and 2-digit CIP code for non-GE programs. This analysis shows that—

- Rates of not passing at least one of the metrics are particularly high for

professional programs in law (CIP 22, about 19 percent of law programs representing 29 percent of enrollment in law programs), theology (CIP 39, about 7 percent, 25 percent) and health (CIP

51, about 10 percent, 19 percent). Recall that for graduate degrees, failure is almost exclusively due to the D/E metric, which would trigger the acknowledgment requirement.

TABLE 4.6—PERCENT OF NON-GE TITLE IV, HEA ENROLLMENT IN PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level					
	Associate	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.8	1.2	0.0	0.0	0.0	1.0
3: Natural Resources And Conservation	0.0	1.3	1.8	0.0	0.0	1.2
4: Architecture And Related Services	0.0	0.0	2.7	0.0	0.0	0.7
5: Area & Group Studies	0.0	0.6	0.0	0.0	0.0	0.5
9: Communication	3.5	1.8	2.0	0.0	0.0	2.0
10: Communications Tech	8.1	2.9	0.0	.....	.....	5.9
11: Computer Sciences	1.5	0.1	0.0	0.0	0.0	0.6
12: Personal And Culinary Services	9.5	0.0	0.0	.....	.....	8.3
13: Education	16.6	2.6	1.6	4.3	0.0	4.2
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.3	0.0	0.0	0.0	.....	0.2
16: Foreign Languages	1.0	2.1	0.0	0.0	0.0	1.8
19: Family & Consumer Sciences	11.2	8.0	3.8	0.0	0.0	9.2
22: Legal Professions	7.8	9.8	3.6	29.6	28.5	20.0
23: English Language	1.1	5.7	3.9	0.0	0.0	4.8
24: Liberal Arts	14.0	2.8	0.6	0.0	0.0	10.8
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	4.9	2.2	6.0	1.4	0.0	2.7
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science .....	.....	0.0	0.0	.....	.....	0.0
29: Military Tech	0.0	0.0	0.0	.....	.....	0.0
30: Multi/Interdisciplinary Studies	1.3	1.1	1.6	0.0	0.0	1.2
31: Parks & Rec	4.8	1.8	0.6	0.0	0.0	2.2
32: Basic Skills	0.0	0.0	0.0	.....	.....	0.0
33: Citizenship Activities .....	.....	0.0	0.0	.....	.....	0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills .....	.....	0.0	0.0	.....	.....	0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0	0.0	0.0
37: Personal Awareness And Self-Improvement .....	.....	.....	0.0	.....	.....	0.0
38: Philosophy And Religious Studies	40.5	1.3	0.0	0.0	0.0	4.2
39: Theology And Religious Vocations	9.4	21.5	7.7	0.0	25.4	14.8
40: Physical Sciences	0.0	0.3	0.0	0.0	0.0	0.2
41: Science Technologies/Technicians	4.2	0.0	0.0	0.0	.....	3.7
42: Psychology	10.8	6.4	4.7	2.0	0.0	6.6
43: Homeland Security	3.7	2.5	5.5	0.0	0.0	3.2
44: Public Admin & Social Services	23.4	3.9	0.5	0.0	0.0	6.2
45: Social Sciences	4.9	0.9	3.2	0.0	0.0	1.6
46: Construction Trades	0.0	0.0	0.0	0.0	.....	0.0
47: Mechanic & Repair Tech	0.4	0.0	.....	.....	.....	0.4
48: Precision Production	0.0	0.0	0.0	.....	.....	0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0	.....	0.0
50: Visual And Performing Arts	6.4	12.7	21.6	1.9	0.0	11.6
51: Health Professions And Related Programs	5.8	1.0	5.5	20.1	18.6	5.4
52: Business	5.3	0.5	0.3	0.0	0.0	1.9
53: High School/Secondary Diplomas	0.0	0.0	0.0	.....	.....	0.0
54: History	0.0	0.8	12.2	0.0	0.0	1.6
60: Residency Programs .....	.....	.....	0.0	0.0	0.0	0.0

TABLE 4.6—PERCENT OF NON-GE TITLE IV, HEA ENROLLMENT IN PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2—Continued

	Credential level					
	Associate	Bachelor's	Master's	Doctoral	Professional	Total
Total	8.5	2.4	2.7	8.9	21.0	5.0

TABLE 4.7—PERCENT OF NON-GE PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level					
	Associate	Bachelor's	Master's	Doctoral	Professional	Total
1: Agriculture & Related Sciences	0.1	0.7	0.0	0.0	0.0	0.3
3: Natural Resources And Conservation	0.0	0.4	0.3	0.0	0.0	0.3
4: Architecture And Related Services	0.0	0.0	0.8	0.0	0.0	0.3
5: Area & Group Studies	0.0	0.3	0.0	0.0	0.0	0.2
9: Communication	0.8	1.1	0.6	0.0	0.0	0.9
10: Communications Tech	2.2	2.4	0.0	.....	.....	2.1
11: Computer Sciences	0.4	0.1	0.0	0.0	0.0	0.2
12: Personal And Culinary Services	3.9	0.0	0.0	.....	.....	3.6
13: Education	3.5	0.8	0.7	0.1	0.0	0.9
14: Engineering	0.0	0.0	0.0	0.0	0.0	0.0
15: Engineering Tech	0.1	0.0	0.0	0.0	0.0	0.1
16: Foreign Languages	0.3	0.6	0.0	0.0	0.0	0.4
19: Family & Consumer Sciences	3.5	2.9	1.2	0.0	0.0	2.7
22: Legal Professions	1.0	1.4	0.4	14.3	19.2	4.9
23: English Language	0.4	1.9	1.0	0.0	0.0	1.4
24: Liberal Arts	15.2	2.1	0.4	0.0	0.0	8.0
25: Library Science	0.0	0.0	0.0	0.0	0.0	0.0
26: Biological & Biomedical Sciences	0.8	1.1	0.5	0.1	0.0	0.7
27: Mathematics And Statistics	0.0	0.0	0.0	0.0	0.0	0.0
28: Military Science .....	.....	0.0	0.0	.....	.....	0.0
29: Military Tech	0.0	0.0	0.0	.....	.....	0.0
30: Multi/Interdisciplinary Studies	1.1	0.7	0.4	0.0	0.0	0.6
31: Parks & Rec	0.8	1.3	0.3	0.0	0.0	1.0
32: Basic Skills	0.0	0.0	0.0	.....	.....	0.0
33: Citizenship Activities .....	.....	0.0	0.0	.....	.....	0.0
34: Health-Related Knowledge And Skills	0.0	0.0	0.0	0.0	0.0	0.0
35: Interpersonal And Social Skills .....	.....	0.0	0.0	.....	.....	0.0
36: Leisure And Recreational Activities	0.0	0.0	0.0	0.0	.....	0.0
37: Personal Awareness And Self-Improvement .....	.....	.....	0.0	.....	.....	0.0
38: Philosophy And Religious Studies	2.1	0.2	0.0	0.0	0.0	0.2
39: Theology And Religious Vocations	2.0	2.5	2.6	0.0	6.6	2.4
40: Physical Sciences	0.0	0.0	0.0	0.0	0.0	0.0
41: Science Technologies/Technicians	0.6	0.0	0.0	0.0	.....	0.4
42: Psychology	3.1	2.9	0.9	0.6	0.0	2.0
43: Homeland Security	0.8	2.0	0.8	0.0	0.0	1.2
44: Public Admin & Social Services	6.3	1.1	0.4	0.0	0.0	1.7
45: Social Sciences	0.5	0.5	0.2	0.0	0.0	0.4
46: Construction Trades	0.0	0.0	0.0	0.0	.....	0.0
47: Mechanic & Repair Tech	0.2	0.0	.....	.....	.....	0.2
48: Precision Production	0.0	0.0	0.0	.....	.....	0.0
49: Transportation And Materials Moving	0.0	0.0	0.0	0.0	.....	0.0
50: Visual And Performing Arts	1.4	4.4	4.9	0.4	0.0	3.7
51: Health Professions And Related Programs	1.3	0.6	2.5	4.5	9.7	2.0
52: Business	1.4	0.2	0.1	0.0	0.0	0.5
53: High School/Secondary Diplomas	0.0	0.0	0.0	.....	.....	0.0
54: History	0.0	0.3	0.5	0.0	0.0	0.3
60: Residency Programs	0.0	.....	0.0	0.0	0.0	0.0
Total	1.8	1.0	0.8	0.7	8.9	1.2

Results of GE Accountability for Programs Subject to the Gainful Employment Rule

This analysis is based on the 2022 PPD described in the “Data Used in this RIA” above. In this subsection, we examine the combined results of the analysis of the final regulations for the 32,058 GE Programs. The analysis is primarily focused on GE metric results for a single year, though continued eligibility depends on performance in multiple years. The likelihood of repeated failure is discussed briefly

below and is incorporated into the budget impact and cost-benefit analyses. Though programs with fewer than 30 completers in the cohort are not subject to the D/E and EP tests, we retain these programs in our analysis to provide a more complete view of program passage than if they were excluded.

Program-Level Results

Tables 4.8 and 4.9 report D/E and EP results by control and credential level for GE programs. This analysis shows that:

- About 64 percent of enrollment is in the 3,937 GE programs for which rates can be calculated.
- 40 percent of enrollment is in 2,228 programs (about 7 percent of all GE programs) that meet the size threshold and would pass both the D/E measure and EP metrics.
- About 24 percent of enrollment is in 1,709 programs (about 5 percent of all GE programs) that would fail at least one of the two metrics.
- Failure rates are significantly lower for public certificate programs (about 4

percent of enrollment is in failing programs) than for proprietary (about 51 percent of enrollment is in failing programs) or nonprofit (about 41 percent of enrollment is in failing programs) certificate programs, though

the latter represents a relatively small share of overall enrollment. Certificate programs that fail typically fail the EP metric, rather than the D/E metric.

- Across all proprietary certificate and degree programs, about 33 percent of enrollment is in programs that fail

one of the two metrics, representing about 22 percent of programs. Degree programs that fail typically fail the D/E metric, with only associate degree programs having a noticeable number of programs that fail the EP metric.

TABLE 4.8—NUMBER AND PERCENT OF TITLE IV, HEA ENROLLMENT IN GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Percent					Number				
	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
UG Certificates	78.5	17.2	0.0	0.3	4.0	682,300	149,300	200	3,000	34,700
Post-BA Certs	93.0	7.0	0.0	0.0	0.0	11,800	900	0	0	0
Grad Certs	78.3	21.3	0.4	0.0	0.0	32,800	8,900	200	0	0
Total	78.7	17.2	0.0	0.3	3.8	726,900	159,200	300	3,000	34,700
Private, Nonprofit:										
UG Certificates	41.6	17.9	0.0	3.9	36.6	32,400	14,000	0	3,100	28,500
Post-BA Certs	96.2	3.8	0.0	0.0	0.0	7,600	300	0	0	0
Grad Certs	75.4	21.9	2.7	0.0	0.0	26,900	7,800	1,000	0	0
Total	55.1	18.2	0.8	2.5	23.4	67,000	22,100	1,000	3,100	28,500
Proprietary:										
UG Certificates	15.2	34.0	0.2	8.5	42.1	83,700	187,000	1,100	46,500	231,700
Associate	18.3	44.6	19.4	14.2	3.4	59,900	145,700	63,500	46,500	11,200
Bachelor's	9.6	66.0	22.5	1.8	0.0	65,200	446,100	152,200	12,100	200
Post-BA Certs	37.8	62.2	0.0	0.0	0.0	300	500	0	0	0
Master's	10.7	72.6	15.7	0.9	0.0	25,800	174,300	37,700	2,200	0
Doctoral	31.3	58.1	10.6	0.0	0.0	16,900	31,400	5,700	0	0
Professional	34.9	14.5	50.7	0.0	0.0	4,200	1,800	6,100	0	0
Grad Certs	32.6	28.9	37.9	0.0	0.7	3,500	3,100	4,100	0	100
Total	13.9	52.9	14.5	5.7	13.0	259,400	989,800	270,400	107,300	243,100
Foreign Private:										
UG Certificates	100.0	0.0	0.0	0.0	0.0	100	0	0	0	0
Post-BA Certs	100.0	0.0	0.0	0.0	0.0	0	0	0	0	0
Grad Certs	15.8	0.0	0.0	84.2	0.0	200	0	0	1,300	0
Total	20.4	0.0	0.0	79.6	0.0	300	0	0	1,300	0
Foreign For-Profit:										
Master's	100.0	0.0	0.0	0.0	0.0	200	0	0	0	0
Doctoral	80.5	19.5	0.0	0.0	0.0	1,600	400	0	0	0
Professional	79.7	0.0	20.3	0.0	0.0	9,200	0	2,400	0	0
Total	80.0	2.8	17.2	0.0	0.0	11,000	400	2,400	0	0
Total:										
UG Certificates	53.3	23.4	0.1	3.5	19.7	798,500	350,300	1,300	52,500	294,900
Associate	18.3	44.6	19.4	14.2	3.4	59,900	145,700	63,500	46,500	11,200
Bachelor's	9.6	66.0	22.5	1.8	0.0	65,200	446,100	152,200	12,100	200
Post-BA Certs	92.1	7.9	0.0	0.0	0.0	19,700	1,700	0	0	0
Master's	10.8	72.6	15.7	0.9	0.0	25,900	174,300	37,700	2,200	0
Doctoral	33.0	56.8	10.2	0.0	0.0	18,500	31,800	5,700	0	0
Professional	56.8	7.4	35.8	0.0	0.0	13,400	1,800	8,500	0	0
Grad Certs	70.6	22.1	5.8	1.4	0.1	63,500	19,900	5,200	1,300	100
Total	36.3	40.0	9.4	3.9	10.5	1,064,600	1,171,400	274,100	114,700	306,400

Note: Enrollment counts rounded to the nearest 100.

TABLE 4.9—NUMBER OF GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL

	Number					Percent				
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Public:										
UG Certificates	18,051	729	1	6	184	95.2	3.8	0.0	0.0	1.0
Post-BA Certs	865	7	0	0	0	99.2	0.8	0.0	0.0	0.0
Grad Certs	1,887	50	2	0	0	97.3	2.6	0.1	0.0	0.0
Total	20,803	786	3	6	184	95.5	3.6	0.0	0.0	0.8
Private, Nonprofit:										
UG Certificates	1,229	93	0	5	60	88.6	6.7	0.0	0.4	4.3
Post-BA Certs	625	4	0	0	0	99.4	0.6	0.0	0.0	0.0
Grad Certs	1,346	43	8	0	0	96.3	3.1	0.6	0.0	0.0
Total	3,200	140	8	5	60	93.8	4.1	0.2	0.1	1.8
Proprietary:										
UG Certificates	1,659	528	5	153	873	51.6	16.4	0.2	4.8	27.1
Associate	1,155	327	98	78	62	67.2	19.0	5.7	4.5	3.6
Bachelor's	610	251	80	21	1	63.3	26.1	8.3	2.2	0.1
Post-BA Certs	48	4	0	0	0	92.3	7.7	0.0	0.0	0.0

TABLE 4.9—NUMBER OF GE PROGRAMS BY RESULT, CONTROL, AND CREDENTIAL LEVEL—Continued

	Number					Percent				
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only
Master's	289	143	37	9	0	60.5	29.9	7.7	1.9	0.0
Doctoral	83	29	10	0	0	68.0	23.8	8.2	0.0	0.0
Professional	23	5	4	0	0	71.9	15.6	12.5	0.0	0.0
Grad Certs	105	14	6	0	3	82.0	10.9	4.7	0.0	2.3
Total	3,972	1,301	240	261	939	59.2	19.4	3.6	3.9	14.0
Foreign Private:										
UG Certificates	28	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Post-BA Certs	27	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Grad Certs	76	0	0	1	0	98.7	0.0	0.0	1.3	0.0
Total	131	0	0	1	0	99.2	0.0	0.0	0.8	0.0
Foreign For-Profit:										
UG Certificates	1	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Master's	6	0	0	0	0	100.0	0.0	0.0	0.0	0.0
Doctoral	3	1	0	0	0	75.0	25.0	0.0	0.0	0.0
Professional	5	0	2	0	0	71.4	0.0	28.6	0.0	0.0
Total	15	1	2	0	0	83.3	5.6	11.1	0.0	0.0
Total:										
UG Certificates	20,968	1,350	6	164	1,117	88.8	5.7	0.0	0.7	4.7
Associate	1,155	327	98	78	62	67.2	19.0	5.7	4.5	3.6
Bachelor's	610	251	80	21	1	63.3	26.1	8.3	2.2	0.1
Post-BA Certs	1,565	15	0	0	0	99.1	0.9	0.0	0.0	0.0
Master's	295	143	37	9	0	61.0	29.5	7.6	1.9	0.0
Doctoral	86	30	10	0	0	68.3	23.8	7.9	0.0	0.0
Professional	28	5	6	0	0	71.8	12.8	15.4	0.0	0.0
Grad Certs	3,414	107	16	1	3	96.4	3.0	0.5	0.0	0.1
Total	28,121	2,228	253	273	1,183	87.7	6.9	0.8	0.9	3.7

Tables 4.10 and 4.11 report the results by credential level and 2-digit CIP code. This analysis shows—

- The highest rate of failure is undergraduate certificate in Personal and Culinary Services (CIP2 12), where about 73 percent of enrollment,

representing 37 percent of undergraduate certificate programs in that field, have failing metrics. This is primarily due to failing the EP metric.

- In Health Professions and Related Programs (CIP2 51), where allied health, medical assisting, and medical

administration are the primary specific fields, 28 percent of enrollment is in an undergraduate certificate program that fails at least one of the two metrics, representing 8 percent of programs.

TABLE 4.10—PERCENT OF GE TITLE IV, HEA ENROLLMENT IN PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level								
	UG certificates	Associate	Bachelor's	Post-BA certs	Master's	Doctoral	Professional	Grad certs	Total
1: Agriculture & Related Sciences	0.0	0.0	0.0	0.0	.....	.....	.....	0.0	0.0
3: Natural Resources And Conservation	0.0	.....	13.1	0.0	0.0	.....	.....	0.0	9.1
4: Architecture And Related Services	0.0	.....	0.0	0.0	0.0	.....	0.0	0.0	0.0
5: Area & Group Studies	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
9: Communication	42.4	0.0	22.9	0.0	21.8	.....	.....	0.0	30.1
10: Communications Tech	10.4	54.7	61.9	0.0	88.9	.....	.....	0.0	38.6
11: Computer Sciences	4.9	9.7	3.6	0.0	4.5	0.0	.....	0.0	5.0
12: Personal And Culinary Services	73.2	59.4	31.8	0.0	0.0	0.0	0.0	31.5	72.4
13: Education	5.9	74.5	75.5	0.0	14.1	0.8	0.0	3.4	24.9
14: Engineering	0.0	37.0	14.5	0.0	0.0	.....	.....	0.0	3.4
15: Engineering Tech	2.0	1.8	0.0	0.0	0.0	.....	.....	0.0	1.6
16: Foreign Languages	0.0	.....	94.8	0.0	.....	.....	.....	0.0	4.5
19: Family & Consumer Sciences	1.8	90.2	72.0	0.0	100.0	100.0	.....	0.0	21.7
22: Legal Professions	3.3	55.9	32.3	0.0	0.0	0.0	61.0	24.2	26.9
23: English Language	57.4	96.6	87.4	0.0	98.2	.....	.....	0.0	66.0
24: Liberal Arts	3.8	0.0	0.0	0.0	0.0	0.0	.....	0.0	3.5
25: Library Science	0.0	.....	100.0	0.0	.....	.....	.....	0.0	23.5
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0	.....	9.1	1.1
27: Mathematics And Statistics	0.0	.....	0.0	0.0	.....	.....	.....	0.0	0.0
28: Military Science	0.0	0.0	0.0	.....	.....	.....	.....	0.0	0.0
29: Military Tech	0.0	0.0	0.0	.....	0.0	.....	.....	0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	96.2	92.0	0.0	0.0	.....	.....	8.8	55.3
31: Parks & Rec	4.3	66.0	0.0	0.0	0.0	0.0	.....	0.0	9.3
32: Basic Skills	41.8	.....	.....	.....	0.0	.....	.....	0.0	41.4
33: Citizenship Activities	0.0	.....	.....	.....	.....	.....	.....	.....	0.0
34: Health-Related Knowledge And Skills	0.0	.....	.....	.....	.....	.....	.....	0.0	0.0
36: Leisure And Recreational Activities	0.0	.....	.....	.....	0.0	.....	.....	.....	0.0
37: Personal Awareness And Self-Improvement	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
38: Philosophy And Religious Studies	0.0	.....	0.0	0.0	0.0	.....	.....	0.0	0.0
39: Theology And Religious Vocations	50.6	0.0	94.2	0.0	90.0	0.0	0.0	0.0	56.1
40: Physical Sciences	0.0	0.0	0.0	0.0	.....	.....	.....	0.0	0.0

TABLE 4.10—PERCENT OF GE TITLE IV, HEA ENROLLMENT IN PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2—Continued

	Credential level								
	UG certificates	Associate	Bachelor's	Post-BA certs	Master's	Doctoral	Professional	Grad certs	Total
41: Science Technologies/Technicians	0.0	0.0	.....	0.0	.....	.....	.....	0.0	0.0
42: Psychology	0.0	0.0	50.3	0.0	27.7	38.0	.....	33.3	36.3
43: Homeland Security	3.1	54.3	21.9	0.0	19.2	66.5	.....	0.0	21.7
44: Public Admin & Social Services	0.0	81.9	57.5	0.0	15.0	9.2	.....	2.8	36.7
45: Social Sciences	0.0	0.0	25.4	0.0	64.5	0.0	.....	0.0	18.0
46: Construction Trades	5.2	0.0	.....	.....	.....	.....	.....	0.0	5.1
47: Mechanic & Repair Tech	2.6	9.6	0.0	.....	.....	.....	.....	0.0	3.2
48: Precision Production	4.1	0.0	.....	.....	.....	.....	.....	.....	4.0
49: Transportation And Materials Moving	2.3	0.0	.....	0.0	0.0	.....	.....	0.0	2.2
50: Visual And Performing Arts	9.8	46.8	52.4	0.0	83.5	.....	0.0	0.0	38.7
51: Health Professions And Related Programs	28.4	33.0	25.2	0.0	24.0	3.3	36.7	15.1	27.8
52: Business	6.7	40.6	2.8	0.0	3.8	2.0	0.0	0.6	9.0
53: High School/Secondary Diplomas	0.0	0.0	.....	.....	.....	.....	.....	.....	0.0
54: History	0.0	0.0	36.4	0.0	0.0	.....	.....	0.0	20.3
60: Residency Programs	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
Total	23.3	37.1	24.3	0.0	16.6	10.2	35.8	7.3	23.7

TABLE 4.11—PERCENT OF GE PROGRAMS FAILING EITHER D/E OR EP METRIC, BY CIP2

	Credential level								
	UG certificates	Associate	Bachelor's	Post-BA certs	Master's	Doctoral	Professional	Grad certs	Total
1: Agriculture & Related Sciences	0.0	0.0	0.0	0.0	.....	.....	.....	0.0	0.0
3: Natural Resources And Conservation	0.0	.....	20.0	0.0	0.0	.....	.....	0.0	0.7
4: Architecture And Related Services	0.0	.....	0.0	0.0	0.0	.....	0.0	0.0	0.0
5: Area & Group Studies	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
9: Communication	1.9	0.0	12.0	0.0	11.1	.....	.....	0.0	2.4
10: Communications Tech	1.3	17.4	29.2	0.0	33.3	.....	.....	0.0	4.4
11: Computer Sciences	0.8	6.0	1.8	0.0	2.4	0.0	.....	0.0	1.2
12: Personal And Culinary Services	37.2	12.7	18.2	0.0	0.0	0.0	0.0	11.1	35.5
13: Education	1.3	10.0	18.2	0.0	6.3	4.3	0.0	0.4	1.2
14: Engineering	0.0	20.0	10.0	0.0	0.0	.....	.....	0.0	0.7
15: Engineering Tech	0.2	2.8	0.0	0.0	0.0	.....	.....	0.0	0.3
16: Foreign Languages	0.0	.....	50.0	0.0	.....	.....	.....	0.0	0.4
19: Family & Consumer Sciences	0.7	25.0	27.3	0.0	100.0	100.0	.....	0.0	1.9
22: Legal Professions	0.6	19.7	12.5	0.0	0.0	0.0	25.0	3.8	4.0
23: English Language	8.6	20.0	36.4	0.0	50.0	.....	.....	0.0	7.9
24: Liberal Arts	1.1	0.0	0.0	0.0	0.0	0.0	.....	0.0	0.9
25: Library Science	0.0	.....	100.0	0.0	.....	.....	.....	0.0	1.9
26: Biological & Biomedical Sciences	0.0	0.0	0.0	0.0	0.0	0.0	.....	1.1	0.4
27: Mathematics And Statistics	0.0	.....	0.0	0.0	.....	.....	.....	0.0	0.0
28: Military Science	0.0	0.0	0.0	.....	.....	.....	.....	0.0	0.0
29: Military Tech	0.0	0.0	0.0	.....	0.0	.....	.....	0.0	0.0
30: Multi/Interdisciplinary Studies	0.0	25.0	28.6	0.0	0.0	.....	.....	0.7	1.4
31: Parks & Rec	1.6	12.0	0.0	0.0	0.0	0.0	.....	0.0	2.3
32: Basic Skills	5.4	.....	.....	.....	0.0	.....	.....	0.0	5.1
33: Citizenship Activities	0.0	.....	.....	.....	.....	.....	.....	.....	0.0
34: Health-Related Knowledge And Skills	0.0	.....	.....	.....	.....	.....	.....	0.0	0.0
35: Interpersonal And Social Skills .....	.....	.....	.....	.....	.....	.....	.....	0.0	0.0
36: Leisure And Recreational Activities	0.0	.....	.....	.....	0.0	.....	.....	.....	0.0
37: Personal Awareness And Self-Improvement	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
38: Philosophy And Religious Studies	0.0	.....	0.0	0.0	0.0	.....	.....	0.0	0.0
39: Theology And Religious Vocations	4.9	0.0	20.0	0.0	14.3	0.0	0.0	0.0	2.8
40: Physical Sciences	0.0	0.0	0.0	0.0	.....	.....	.....	0.0	0.0
41: Science Technologies/Technicians	0.0	0.0	.....	0.0	.....	.....	.....	0.0	0.0
42: Psychology	0.0	0.0	28.6	0.0	15.8	13.3	.....	1.4	3.7
43: Homeland Security	0.6	21.6	12.1	0.0	13.0	25.0	.....	0.0	3.0
44: Public Admin & Social Services	0.0	40.0	21.4	0.0	10.5	28.6	.....	1.1	2.8
45: Social Sciences	0.0	0.0	13.3	0.0	20.0	0.0	.....	0.0	0.8
46: Construction Trades	1.2	0.0	.....	.....	.....	.....	.....	0.0	1.2
47: Mechanic & Repair Tech	1.5	6.2	0.0	0.0	.....	.....	.....	0.0	1.7
48: Precision Production	1.6	0.0	.....	.....	.....	.....	.....	.....	1.6
49: Transportation And Materials Moving	0.9	0.0	.....	0.0	0.0	.....	.....	0.0	0.8
50: Visual And Performing Arts	1.2	18.8	23.5	0.0	38.5	.....	0.0	0.0	5.5
51: Health Professions And Related Programs	8.4	16.5	6.3	0.0	10.6	5.1	22.2	1.1	8.2
52: Business	1.4	14.9	5.2	0.0	4.3	4.3	0.0	0.2	2.4
53: High School/Secondary Diplomas	0.0	0.0	.....	.....	.....	.....	.....	.....	0.0
54: History	0.0	0.0	16.7	0.0	0.0	.....	.....	0.0	1.8
60: Residency Programs	0.0	.....	.....	0.0	.....	.....	.....	0.0	0.0
Total	5.5	13.8	10.6	0.0	9.5	7.9	15.4	0.6	5.3

Program Ineligibility

For GE programs, title IV, HEA ineligibility is triggered by two years of failing the same metric within a three-year period. Years when a program does not meet the n-size requirement are not counted towards those three years. The top panel of Table 4.12 shows the share of GE enrollment and programs in each result category in a second year as a function of the result in the first year,

along with the rate of becoming ineligible. Failure rates are quite persistent, with failure in one year being highly predictive of failure in the next year, and therefore ineligibility for title IV, HEA funds. Among programs that fail only the D/E metric in the first year, 69.6 percent of enrollment is in programs that also fail D/E in year 2 and would be ineligible for title IV, HEA participation the following year. The comparable rates for programs that fail

EP only or both D/E and EP in the first year are 86.6 and 96.3 percent, respectively. The share of programs (rather than enrollment in such programs) that become ineligible conditional on first year results is similar, as shown in the bottom panel of Table 4.12. These rates understate the share of programs that would ultimately become ineligible when a third year is considered.

Table 4.12. GE Program Performance Transition Between Years One and Two

	Percent of Enrollment by Result in Year Two					
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
Result in Year 1	No D/E or EP data	78.2	14.2	0.5	1.3	5.8
	Pass	3.0	91.9	1.7	0.1	3.3
	Fail D/E only	3.5	24.0	57.7	14.6	0.1
	Fail both D/E and EP	0.3	0.3	5.5	83.2	10.6
	Fail EP only	1.9	5.9	0.0	8.4	83.8
	Percent of Programs by Result in Year Two					
	No D/E or EP data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Ineligible
Result in Year 1	No D/E or EP data	95.6	3.0	0.1	0.2	1.1
	Pass	9.5	82.9	1.5	0.4	5.7
	Fail D/E only	13.4	16.2	51.8	17.8	0.8
	Fail both D/E and EP	2.2	1.5	5.5	72.9	17.9
	Fail EP only	9.1	4.1	0.1	8.1	78.5

Institution-Level Analysis of GE Program Accountability Provisions

Many institutions have few programs that are subject to the accountability provisions of GE, either because they are nonproprietary institutions with relatively few certificate programs or because their programs tend to be too small in size to have published median debt or earnings measures. Characterizing the share of GE programs that have reported debt and earnings metrics that fail in particular postsecondary sectors can therefore give a distorted sense for the effect the rule might have on institutions in that sector. For example, a college (or group of colleges) might offer a single GE program that fails the rule and so appear to have 100 percent of its GE programs fail the rule. But if that program is a very small share of the institution's overall enrollment (or its title IV, HEA enrollment) then even if every student

in that program were to stop enrolling in the institution—an unlikely scenario as discussed below—the effect on the institution(s) would be much less than would be implied by the 100 percent failure rate among its GE programs. To provide better context for evaluating the potential effect of the GE rule on institutions or sets of institutions, we describe the share of all title IV, HEA supported enrollment—including enrollment in both GE and non-GE programs—that is in a GE program and that fails a GE metric and, therefore, is at risk of losing title IV, HEA eligibility.²⁹⁰ Again, this should not be

²⁹⁰ Note that these statistics still do not fully capture the financial impact of GE on institutions. A complete analysis would account for the share of institutional revenue accounted for by title IV, HEA students, and the extent to which students in programs that fail GE will unenroll from the institutions entirely (versus transferring to a passing program at the same institution). The measures here are best viewed as a proxy for the share of Federal

viewed as an estimate of potential enrollment (or revenue) loss to the institution—in many cases the most likely impact of a program failing the GE metrics or losing eligibility is that students enroll in higher performing programs in the same institution.

Table 4.13 reports the distribution of institutions by share of enrollment that is in a failing GE program, by control and institution type. It shows that about 91 percent of public institutions and 95 percent of nonprofit institutions have no enrollment in GE programs that fail the GE metric. This rate is much lower—about 44 percent—for proprietary institutions, where all types of credential programs are covered by GE accountability and failure rates tend to be higher.

title IV, HEA revenue at an institution that is potentially at risk due to the GE accountability provisions.

TABLE 4.13—DISTRIBUTION OF INSTITUTIONS BY SHARE OF ENROLLMENT THAT FAILS GE ACCOUNTABILITY, BY CONTROL AND INSTITUTION TYPE
[All Institutions]

	Share of institutional enrollment in failing GE programs							
	Total	0%	0–5%	5–10%	10–20%	20–40%	40–99%	100%
Public:								
Less-Than 2-Year	560	470	20	10	30	20	10	0
2-Year	650	610	40	0	0	0	0	0
4-Year or Above	380	380	0	0	0	0	0	0
Total	1,590	1,450	60	20	30	30	10	0
Private, Nonprofit:								
Less-Than 2-Year	110	90	0	0	0	0	10	10
2-Year	60	50	0	0	0	0	0	0
4-Year or Above	560	550	10	0	0	0	0	0
Total	730	690	10	0	0	10	10	10
Proprietary:								
Less-Than 2-Year	1,270	530	10	10	20	30	200	480
2-Year	120	70	0	10	0	10	30	0
4-Year or Above	100	60	0	0	10	10	20	0
Total	1,490	660	10	10	30	60	240	490
Total:								
Less-Than 2-Year	1,940	1,080	30	20	50	60	210	490
2-Year	820	720	40	10	10	20	30	0
4-Year or Above	1,050	990	10	10	10	10	20	0
Total	3,810	2,800	80	30	60	90	260	500

Note: All counts rounded to the nearest 100. Columns may not sum to totals because of rounding.

Very few public community or technical colleges (CCs) have considerable enrollment in programs that would fail GE. About 6 percent of the predominant 2-year public colleges have any of their enrollment in certificate programs that would fail, and about 5 percent of the predominantly less than two-year technical colleges

have more than 20 percent of enrollment that does.

The share of enrollment in failing GE programs for Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), and other minority-serving institutions is even smaller, as shown in Table 4.14.²⁹¹ At HBCUs, only one college out of 100 has more than five percent of

enrollment in failing programs; across all HBCUs, only five programs at four schools fail. TCUs have no failing programs. Less than one percent of Hispanic-serving institutions (HSIs) have more than 10 percent of enrollment in failing programs.²⁹² We conducted a similar analysis excluding institutions that do not have any GE programs. The patterns are similar.

TABLE 4.14—DISTRIBUTION OF INSTITUTIONS BY SHARE OF ENROLLMENT THAT FAILS GE ACCOUNTABILITY, BY SPECIAL MISSION TYPE

	Total	Share of institutional enrollment in failing GE programs					
		0%	0–5%	5–10%	10–20%	20–40%	40–99%
	N of Institutions						
HBCU	100	96	3	1	0	0	0
TCU	35	35	0	0	0	0	0
HSI	446	425	17	1	0	2	1
All Other Non-FP MSI	158	144	3	3	4	4	0
Total	739	700	23	5	4	6	1

As noted above, these estimates cannot assess the impact of the GE provisions on total enrollment at these institutions. Especially at institutions with diverse program offerings, many

students in failing programs can be expected to transfer to other non-failing programs within the institution (as opposed to exiting the institution). Moreover, many institutions are likely

to admit additional enrollment into their programs from failing programs at other (especially for-profit) institutions. We quantify the magnitude of this enrollment shift and revisit the

²⁹¹ Under § 668.403(b)(1)(i), debt considered in the calculation of the D/E rates is capped at the total net cost for tuition, fees, and books. However, due to data constraints noted in the RIA, this cap was not applied in the analysis of the impact of the rule. An analysis by New America suggests that this cap will lead to a large reduction in the number of

graduate programs at HBCUs, HSIs, TCUs, and other MSIs projected to fail the D/E rates measure. See Caldwell, Tia & Garza, Roxanne (2023). Previous Projections Overestimated Gainful Employment Failures: Almost All HBCUs & MSI Graduate Programs Pass. New America (<https://www.newamerica.org/education-policy/edcentral/ge-failures-overestimated/>).

²⁹² The number of Hispanic Serving Institutions reported here differs slightly from the current eligibility list, as the 2022 PPD uses designations from 2021. The number of HBCUs and TCUs is the same in both sources, however.

implications for overall institution-level enrollment effects in a later section.

Regulation Targets Low-Performing GE Programs

The Department conducted an analysis on which specific GE programs fail the metrics. The analysis concludes that the metrics target programs where students earn little, borrow more, and default at higher rates on their student

loans than similar programs providing the same credential.

Table 4.15 reports the average program-level cohort default rate for GE programs, separately by result, control, and credential level. Programs are weighted by their average title IV, HEA enrollment in AY 2016 and 2017 to better characterize the outcomes experienced by students. The overall 3-year program default rate is 12.9 percent but is higher for certificate programs

and for programs offered by proprietary schools. The average default rate is higher for programs that fail the EP threshold than for programs that fail the D/E metric, despite debt being lower for the former. This is because even low levels of debt are difficult to repay when earnings are very low. Programs that pass the metrics, either with data or without, have lower default rates than those that fail.

TABLE 4.15—AVERAGE PROGRAM COHORT DEFAULT RATE BY RESULT, OVERALL AND BY CONTROL, AND CREDENTIAL LEVEL
[Enrollment-weighted]

	No data	Pass	Fail D/E only	Fail both D/E and EP	Fail EP only	Total
Public:						
UG Certificates	16.6	17.5	11.1	20.4	19.9	16.9
Post-BA Certs	2.3	2.4	.....	.....	.....	2.3
Grad Certs	2.6	2.2	0.0	.....	.....	2.5
Total	15.8	16.5	6.2	20.4	19.9	16.1
Private, Nonprofit:						
UG Certificates	10.0	9.9	.....	15.9	14.5	12.0
Post-BA Certs	2.9	1.2	.....	.....	.....	2.8
Grad Certs	2.6	1.9	0.4	.....	.....	2.4
Total	6.2	6.9	0.4	15.9	14.5	8.7
Proprietary:						
UG Certificates	14.0	14.4	16.9	14.9	13.9	14.2
Associate	15.0	12.8	17.9	19.6	17.6	15.3
Bachelor's	13.7	11.5	14.4	14.8	11.9	12.4
Post-BA Certs	26.4	13.2	.....	.....	.....	16.9
Master's	4.9	3.8	5.1	4.5	.....	4.1
Doctoral	3.8	4.6	5.4	.....	.....	4.4
Professional	1.0	0.0	0.7	.....	.....	0.7
Grad Certs	1.4	4.2	5.5	.....	.....	3.9
Total	12.0	10.6	13.3	16.7	14.1	12.0
Foreign Private:						
UG Certificates	0.0	.....	.....	.....	.....	0.0
Post-BA Certs	12.5	.....	.....	.....	.....	12.5
Grad Certs	5.2	.....	.....	0.0	.....	0.2
Total	3.6	.....	.....	0.0	.....	0.2
Foreign For-Profit:						
Master's	0.0	.....	.....	.....	.....	0.0
Doctoral	0.5	5.3	.....	.....	.....	1.4
Professional	1.3	.....	1.3	.....	.....	1.3
Total	1.1	5.3	1.3	.....	.....	1.3
Total:						
UG Certificates	16.1	15.4	16.1	15.3	14.6	15.5
Associate	15.0	12.8	17.9	19.6	17.6	15.3
Bachelor's	13.7	11.5	14.4	14.8	11.9	12.4
Post-BA Certs	2.9	5.4	.....	.....	.....	3.2
Master's	4.8	3.8	5.1	4.5	.....	4.1
Doctoral	3.5	4.6	5.4	.....	.....	4.3
Professional	1.2	0.0	0.8	.....	.....	1.0
Grad Certs	2.5	2.4	4.4	0.0	.....	2.6
Total	13.9	11.3	13.1	16.6	14.7	12.9

To better understand the specific types of programs that underpin the aggregate patterns described above, Table 4.16 lists the 20 most common types of programs (the combination of field and credential level) by enrollment count in the 2022 PPD. The programs with the highest enrollments are undergraduate certificate programs in cosmetology, allied health, liberal arts,

and practical nursing, along with bachelor's programs in business and nursing. These 20 most common types of programs represent more than half of all enrollments in GE programs. Table 4.17 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students

completing a program), the average annual D/E rate, and the average cohort default rate (weighted by the number of students completing a program). This shows quite a bit of variability in debt, loan service, earnings, and default across different types of programs.

4.16—GE PROGRAMS WITH THE MOST STUDENTS, BY CIP AND CREDENTIAL LEVEL

	Number of programs	Percent of all programs	Number of students	Percent of students at all programs
Field of Study (Ordered by All-Sector Enrollment):				
1204—Cosmetology & Personal Grooming—UG Certificates	1,267	4.0	191,600	6.5
5202—Business Administration—Bachelor's	72	0.2	149,000	5.1
5108—Allied Health (Medical Assisting)—UG Certificates	895	2.9	147,100	5.0
2401—Liberal Arts—UG Certificates	345	1.1	140,900	4.8
5139—Practical Nursing—UG Certificates	1,032	3.3	130,900	4.5
5107—Health & Medical Administrative Services—UG Certificates	910	2.9	83,500	2.8
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Bachelor's	56	0.2	75,600	2.6
4706—Vehicle Maintenance & Repair—UG Certificates	722	2.3	75,100	2.6
4301—Criminal Justice & Corrections—Bachelor's	47	0.2	55,500	1.9
5202—Business Administration—Master's	46	0.1	55,400	1.9
4805—Precision Metal Working—UG Certificates	761	2.4	49,000	1.7
5109—Allied Health (Diagnostic & Treatment)—UG Certificates	725	2.3	47,000	1.6
5108—Allied Health (Medical Assisting)—Associate	142	0.5	43,800	1.5
5107—Health & Medical Administrative Services—Bachelor's	46	0.1	42,100	1.4
5202—Business Administration—Associate	89	0.3	39,600	1.4
5107—Health & Medical Administrative Services—Associate	128	0.4	38,700	1.3
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Master's	20	0.1	37,800	1.3
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Associate	92	0.3	36,300	1.2
5202—Business Administration—UG Certificates	573	1.8	34,300	1.2
5106—Dental Support—UG Certificates	432	1.4	33,100	1.1
All Other Programs	22,920	73.2	1,424,900	48.6

Note: the number of students has been rounded to the nearest 100.

4.17—ANNUAL LOAN PAYMENT, EARNINGS, D/E RATE, COHORT DEFAULT RATE BY PROGRAM TYPE
[Enrollment-weighted]

	Annual loan payment	Median 2018–19 earnings (in 2019 \$) of 3yrs after graduation	Average annual DTE rate	Cohort default rate
Field of Study (Ordered by All-Sector Enrollment):				
1204—Cosmetology & Personal Grooming—UG Certificates	1,004	17,104	6.51	13.68
5202—Business Administration—Bachelor's	2,711	48,059	5.78	14.07
5108—Allied Health (Medical Assisting)—UG Certificates	947	24,137	4.28	16.58
2401—Liberal Arts—UG Certificates	99	29,893	0.26	16.38
5139—Practical Nursing—UG Certificates	1,075	39,763	3.07	10.23
5107—Health & Medical Administrative Services—UG Certificates	1,107	23,556	5.34	14.96
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Bachelor's	1,948	76,718	2.68	3.81
4706—Vehicle Maintenance & Repair—UG Certificates	1,410	37,746	4.03	19.48
4301—Criminal Justice & Corrections—Bachelor's	2,720	38,155	7.69	17.06
5202—Business Administration—Master's	3,725	58,366	6.60	4.09
4805—Precision Metal Working—UG Certificates	642	34,659	2.11	26.57
5109—Allied Health (Diagnostic & Treatment)—UG Certificates	564	42,953	2.15	11.7
5108—Allied Health (Medical Assisting)—Associate	2,275	31,598	7.98	12.16
5107—Health & Medical Administrative Services—Bachelor's	3,292	37,044	9.22	10.89
5202—Business Administration—Associate	2,532	32,427	8.30	21.66
5107—Health & Medical Administrative Services—Associate	2,721	26,779	10.51	14.02
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Master's	3,852	96,946	4.02	2.59
5138—Registered Nursing, Nursing Administration, Nursing Research & Clinical Nursing—Associate	2,535	61,494	4.69	6.93
5202—Business Administration—UG Certificates	705	35,816	1.60	20.07
5106—Dental Support—UG Certificates	1,024	24,557	4.42	14.00
All Other Programs	3,105	42,530	7.98	12.07

Table 4.18 lists the most frequent types of failing GE programs (by enrollment in failing programs). Failing programs are disproportionately in a small number of types of programs. About 22 percent of enrollment in failing programs is in UG Certificate Cosmetology programs alone, reflecting both high enrollment and high failure rates. Another 20 percent are in UG Certificate programs in Health/Medical

administration and assisting, dental support, and massage, reflecting large enrollment and moderate failure rates. These 20 categories account for about 72 percent of all enrollments in programs that fail at least one GE metric. Table 4.19 provides the average program annual loan payment, the average program earnings, and the average default rate (all weighted by title IV, HEA enrollment) for the most frequent

types (by field and credential) of GE programs that fail at least one GE metric (by enrollment count), separately for failing and passing programs. Within each type of program, failing programs have much higher loan payments, lower earnings, and higher default rates than programs that pass the GE metrics. This demonstrates that higher-performing GE programs exist even within the same

field and credential level as programs that fail GE.

4.18—FAILING GE PROGRAMS WITH THE MOST STUDENTS, BY GE RESULT, CIP, AND CREDENTIAL LEVEL

	Number of failing programs	Percent of failing programs	Number of students	Percent of students at failing programs
1204—Cosmetology & Personal Grooming—UG Certificates	638	35.9	153,700	21.5
5108—Allied Health (Medical Assisting)—UG Certificates	159	9.0	79,100	11.1
5107—Health & Medical Administrative Services—UG Certificates	106	6.0	37,600	5.3
5107—Health & Medical Administrative Services—Associate	37	2.1	28,800	4.0
5107—Health & Medical Administrative Services—Bachelor's	5	0.3	26,400	3.7
3017—Behavioral Sciences—Bachelor's	2	0.1	20,100	2.8
5202—Business Administration—Associate	23	1.3	19,000	2.7
5108—Allied Health (Medical Assisting)—Associate	38	2.1	17,600	2.5
1312—Teacher Education & Professional Development, Specific Levels & Methods—Bachelor's	2	0.1	17,500	2.4
5115—Mental & Social Health Services & Allied Professions—Master's	5	0.3	15,400	2.2
5106—Dental Support—UG Certificates	63	3.5	14,300	2.0
5135—Somatic Bodywork—UG Certificates	95	5.3	13,400	1.9
4301—Criminal Justice & Corrections—Bachelor's	7	0.4	13,100	1.8
4400—Human Services, General—Bachelor's	2	0.1	12,100	1.7
4301—Criminal Justice & Corrections—Associate	16	0.9	11,700	1.6
4201—Psychology—Bachelor's	4	0.2	10,200	1.4
1205—Culinary Arts—UG Certificates	21	1.2	5,800	0.8
2301—English Language & Literature, General—UG Certificates	8	0.5	5,600	0.8
5139—Practical Nursing—UG Certificates	27	1.5	5,500	0.8
5204—Business Operations—UG Certificates	33	1.9	5,400	0.8
All Other Programs	485	27.3	201,200	28.2
Total	1,776	100.0	713,200	100.0

Note: Student counts rounded to the nearest 100.

4.19—ANNUAL LOAN PAYMENT, EARNINGS, DEFAULT RATE AMONG TOP TYPES OF FAILING GE PROGRAMS

	Annual loan payment indicator for failing GE metric in 2019 for any reason		Earnings indicator for failing GE metric in 2019 for any reason		Default rate (ever) indicator for failing GE metric in 2019 for any reason	
	Passing	Failing	Passing	Failing	Passing	Failing
Field of Study & Level (Ordered by Failing Program Enrollment):						
1204—Cosmetology & Personal Grooming—UG Certificates	566.7	1,063.9	27,199.4	16,913.1	17.2	13.0
5108—Allied Health (Medical Assisting)—UG Certificates	813.1	1,034.3	27,612.1	22,527.1	16.5	16.6
5107—Health & Medical Administrative Services—UG Certificates	860.2	1,279.7	28,803.9	21,243.7	14.6	15.4
5107—Health & Medical Administrative Services—Associate	2,250.0	2,857.4	32,807.9	25,598.2	9.5	15.5
5107—Health & Medical Administrative Services—Bachelor's	2,960.3	3,482.3	43,590.7	34,118.7	10.4	11.2
3017—Behavioral Sciences—Bachelor's		3,499.3		29,512.7	0.0	16.5
5202—Business Administration—Associate	2,304.5	2,762.1	37,887.8	27,280.5	19.6	23.9
5108—Allied Health (Medical Assisting)—Associate	3,458.0	3,121.2	36,729.0	31,081.2	9.2	11.0
1312—Teacher Education & Professional Development, Specific Levels & Methods—Bachelor's	2,027.4	2,707.3	35,298.8	26,152.5	10.1	16.0
5115—Mental & Social Health Services & Allied Professions—Master's	5,305.3	7,096.9	49,712.0	42,604.7	4.5	6.1
5106—Dental Support—UG Certificates	986.9	1,055.5	27,084.4	23,011.8	13.1	15.1
5135—Somatic Bodywork—UG Certificates	672.6	948.6	27,373.5	19,258.2	13.6	13.3
4301—Criminal Justice & Corrections—Bachelor's	2,465.7	3,527.6	40,112.4	32,371.9	15.4	22.3
4400—Human Services, General—Bachelor's	2,493.8	3,903.3	33,323.4	32,788.8	14.3	14.9
4301—Criminal Justice & Corrections—Associate	1,517.7	2,625.0	35,501.2	28,408.3	18.8	22.1
4201—Psychology—Bachelor's	2,068.4	3,333.3	36,641.7	28,865.8	11.1	17.4
1205—Culinary Arts—UG Certificates	2,399.3	0.0		19,361.7	35.0	6.0
2301—English Language & Literature, General—UG Certificates		3,661.0		36,873.0	25.0	9.9
5139—Practical Nursing—UG Certificates	104.7	0.0	30,557.3	26,423.7	16.6	11.9
5204—Business Operations—UG Certificates	494.1	635.9	28,985.0	18,202.5	13.5	16.0
All Other Programs	2,462.3	4,062.4	52,687.3	29,767.5	11.6	13.3

Student Demographic Analysis

Methodology for Student Demographic Analysis

The Department conducted analyses of the 2022 PPD to assess the role of student demographics as a factor in program performance. Our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone. We

examined the demographic composition of program enrollment, comparing the composition of programs that pass, fail, or did not have data. We also conducted regression analysis, which permits us to hold constant several factors at once. This analysis focuses on GE programs since non-GE programs are not at risk of

becoming ineligible for title IV, HEA aid.²⁹³

For the race and ethnicity variables, we used the proportion of individuals in each race and ethnicity category among all completers of each certificate or

²⁹³ We conducted the regression analysis discussed below for non-GE programs as well. Our conclusions about the relative contribution of demographic factors in explaining program performance on the D/E and EP metrics is similar for non-GE programs as for GE programs.

degree reported in the IPEDS 2016 and 2017 Completions Surveys.²⁹⁴ Race and ethnicity is not available for only title IV, HEA recipients, so we rely on information for all (including non-title IV, HEA student) completers instead from IPEDS. We construct four race/ethnicity variables:

- Percent Black
- Percent Hispanic
- Percent Asian
- Percent non-White.

We aggregated the number of completions in each race/ethnicity category reported for each program in IPEDS to the corresponding GE program definition of six-digit OPEID, CIP code, and credential level. While D/E and EP rates measure only the outcomes of students who completed a program and received title IV, HEA program funds, IPEDS completions data include both title IV, HEA graduates and non-title IV, HEA graduates. Race and ethnicity data is not available separately for title IV, HEA completers. We believe the IPEDS data provides a reasonable approximation of the proportion, by race and ethnicity, of title IV, HEA graduates completing GE programs. We determined percent of each race and ethnicity category for 25,278 of the 32,058 programs. Many smaller programs could not be matched primarily because, as stated above, IPEDS and NSLDS use different program categorization systems, and the two sources at times are not sufficiently consistent to match data at the GE program-level. Nonetheless, we do not believe this will substantially affect our results since programs that do not match are less likely to meet the n-size criteria and would be likely excluded from our analysis of program performance.

Percent Pell for this analysis is the percentage of title IV, HEA completers during award years 2015, 2016, and 2017 who received a Pell grant at any

time in their academic career. Because Pell status is being used as a proxy for socioeconomic background, we counted students if they had received a Pell grant at any time in their academic career, even if they did not receive it for enrollment in the program. For instance, students that received Pell at their initial undergraduate institution but not at another institution they attended later would be considered a Pell grant recipient at both institutions.

Several other background variables were collected from students' Free Application for Federal Student Aid (FAFSA) form. For all students receiving title IV, HEA aid in award years 2015, 2016, and 2017, the Department matched their enrollment records to their latest FAFSA filed associated with their first award year in the program in which they were enrolled. First-generation status, described below, is taken from students earliest received FAFSA. From these, the Department constructed the following:

- Percent of students that are male.
- Percent of students that are first-generation, defined as those who indicated on the FAFSA not having a parent that had attended college. Children whose parents completed college are more likely to attend and complete college.
- Average family income in 2019 dollars. For dependent students, this includes parental income and the students' own income. For independent students, it includes the student's own income and spousal income.
- Average expected family contribution. We consider EFC as an indicator of socioeconomic status because EFC is calculated based on household income, other resources, and family size.
- Average age at time of FAFSA filing.

- Percent of students aged 24 or older at time of FAFSA filing.

- Share of students that are independent. Independent status is determined by a number of factors, including age, marital status, having dependents, and veteran status.

- Median student income prior to program enrollment among students whose income is greater than or equal to three-quarters of a year of earnings at Federal minimum wage. We only compute this variable for programs where at least 30 students meet this requirement, this variable should be viewed as a rough indicator of students' financial position prior to program entry. The average percentage of enrollees covered by this variable is 57.6 across all programs.

Based on these variables, we determined the composition of over 23,907 of the 32,058 programs in our data, though some demographic variables have more non-missing observations. Unless otherwise stated, our demographic analysis treats programs (rather than students) as the unit of analysis. The analysis, therefore, does not weight programs (and their student characteristics) by enrollment.

Table 4.20 provides program-level descriptive statistics for these demographic variables in the GE program dataset. The typical (median) program has 6 percent completers that are Black, 6 percent Hispanic, 0 percent Asian (program mean is 3 percent), and 38 percent non-White. At the median program, sixty-one percent are independent, half are over the age 24, and 31 percent are male. Half are first-generation college students and 77 percent have ever received a Pell Grant. Average family income at time of first FAFSA filing is \$38,000 and the typical student who is attached to the labor force earns \$29,900 before enrolling in the program.

4.20—DESCRIPTIVE STATISTICS OF THE DEMOGRAPHIC VARIABLES

	Programs	Median	Average	Std. deviation
Share T4 Completers First Gen	24,199	50	49	34
Share T4 Completers Ever Pell	24,199	77	67	36
Share T4 Completers Out-of-State	24,199	0	16	30
Share of T4 Completers Male	24,199	31	42	41
Share of T4 Completers Age 24+	24,199	50	51	37
Share T4 Completers Independent	24,199	61	58	36
Share All Completions Non-White	25,278	38	43	30
Share All Completions Black	25,278	6	14	20
Share All Completions Hispanic	25,278	6	15	23
Share All Completions Asian	25,278	0	3	9
Age at Time of FAFSA	23,907	26	28	8
FAFSA Family Income	23,907	38,137	47,726	45,433

²⁹⁴ Specifically, the C2016A and C2017A datasets available from the IPEDS data center. These cover

the 2015–16 and 2016–17 academic years (July 1 to June 30).

4.20—DESCRIPTIVE STATISTICS OF THE DEMOGRAPHIC VARIABLES—Continued

	Programs	Median	Average	Std. deviation
Median Student Pre-Inc	17,599	29,908	38,585	32,806

Student Demographics Descriptive Analysis

Table 4.21 reports average demographic characteristics of GE

programs separately by GE result. Programs that fail at least one GE metric have a higher share of students that are female, higher share of students that are Black or Hispanic, lower student and

family income, and higher share of students that have ever received the Pell grant. Average student age and dependency status is similar for passing and failing programs.

4.21—DEMOGRAPHIC SHARES BY RESULT

	All	Passing	Fail (any)	Fails D/E	Fails EP
Share TIV Completers First Gen	49	48	61	55	62
Share TIV Completers Ever Pell	67	66	80	74	82
Share TIV Completers Out-of-State	16	15	21	40	16
Share of TIV Completers Male	42	44	21	28	19
Share of TIV Completers Age 24+	51	51	49	57	46
Share TIV Completers Independent	58	58	59	66	57
Share All Completions Non-White	43	42	56	58	56
Share All Completions Black	14	13	22	26	21
Share All Completions Hispanic	15	15	22	18	23
Share All Completions Asian	3	3	4	2	4
Age at Time of FAFSA	28	28	27	29	27
FAFSA Family Income	47,700	48,600	35,900	41,100	34,200
Median Student Pre-Inc	38,600	39,600	29,200	34,200	27,400

Note: Income values rounded to the nearest 100.

Student Demographics Regression Analysis

One limitation of the descriptive tabulations presented above is that it is difficult to determine which factors, whether they be demographics or program characteristics, explain the higher failure rate of programs serving certain groups of students. To further examine the relationship between student demographics and program results under the regulations, we analyzed the degree to which specific demographic characteristics might be associated with a program's annual D/E rate and EP, while holding other characteristics constant.

For this analysis, the Department estimated the parameters of ordinary least squares (OLS) linear regression models with annual debt-to-earnings or the earnings premium as the dependent (outcome) variables and indicators of student, program, and institutional characteristics as independent variables.²⁹⁵ The independent demographic variables included in the

regression analysis are: share of students in different race and ethnicity categories; share of students ever receiving Pell Grants; share of students that are male; share of students that are first-generation college students; share of students that are independent; and average family income from student's FAFSA. Program and institutional characteristics include credential level and control (public, private nonprofit, and proprietary). In some specifications we include institution fixed effects and omit control. When used with program-level data, institutional fixed effects control for any factors that differ between institutions but are common among programs in the same institution, such as institutional leadership, pricing strategy, and State or local factors.

Table 4.22 reports estimates from the D/E rate regressions described above, with each column representing a different regression model that includes different sets of independent variables. Comparing the R-squared across different columns demonstrates the degree to which different factors explain variation in the outcome. The first three columns quantify the extent to which variation in D/E rates are accounted for by program and institutional characteristics. The institutional control alone (column 1) explains 22 percent of the variation in D/E and adding

credential level increases the R-squared to 33 percent (column 2). D/E rates are 2.5 to 3.9 percentage points higher for private nonprofit and for-profit institutions than public institutions (the omitted baseline category) after controlling for credential level. This may reflect the much higher tuition prices charged by private institutions, which can result in higher debt service. Graduate credential levels also have much higher debt-to-earnings ratios than undergraduate credentials, reflecting the typically higher tuition costs associated with graduate programs.

Almost all programs are in institutions with multiple GE programs, so column 3 includes institution fixed effects in place of indicators for control.²⁹⁶ Credential level and institution together account for 77 percent of the variation in D/E rates across programs. To illustrate how much more of the variation in outcomes is accounted for by student characteristics, column 4 adds the demographic characteristics on top of the model with credential level and institution effects. Doing so only slightly increases the model's ability to account for variation in D/E, lifting the R-

²⁹⁵ Though not shown below, we have conducted parallel regression analysis with binary indicators for whether the program fails the D/E metric and whether it fails the EP metric as the outcomes. Results are qualitatively similar to those reported here using continuous outcomes, though the amount of variation in these binary outcomes that demographics explain is even more muted than that reported here.

²⁹⁶ Only 4 percent of GE programs are the only GE program within the institution. The median number of programs within an institution is 18.

squared to 79 percent. For example, this specification effectively compares programs with more Pell students to those with fewer Pell students within the same institution and same credential level, while also controlling for the other independent variables listed. Demographic characteristics, therefore,

appear to explain little of the variation in D/E rates across programs beyond what can be predicted by institutional characteristics and program credential level. Evidently, institution- and program-level factors, which could include such things as institutional performance and decisions about

institutional pricing along with other factors, are much more important.²⁹⁷ The final two columns report similar models, but weighting by average title IV, HEA enrollment, and the results are qualitatively similar.

4.22—REGRESSION ANALYSIS OF THE DEMOGRAPHIC VARIABLES, GE PROGRAMS, OUTCOME: D/E

	1	2	3	4	5	6
Private, Nonprofit	3.062 (0.305)	2.512 (0.263)	.....	.....	.....	.....
Proprietary	4.928 (0.110)	3.868 (0.101)	.....	.....	.....	.....
Credential Level:						
UG Certificates .....	.....	-2.118 (0.207)	-2.495 (0.603)	-4.083 (0.618)	-1.079 (0.654)	-5.037 (0.594)
Associate .....	.....	0.084 (0.251)	0.295 (0.449)	-0.651 (0.426)	1.401 (0.651)	-0.927 (0.427)
Master's .....	.....	2.780 (0.769)	1.552 (0.591)	1.303 (0.479)	0.983 (0.719)	1.683 (0.563)
Doctoral .....	.....	4.451 (0.809)	3.758 (1.096)	5.701 (1.051)	3.824 (1.469)	7.892 (1.235)
Professional .....	.....	12.480 (3.696)	5.841 (1.002)	5.672 (1.387)	6.753 (0.850)	8.839 (1.547)
Grad Certs .....	.....	1.200 (0.596)	1.431 (1.748)	0.928 (1.679)	4.650 (2.577)	4.738 (2.415)
% Black .....	.....	.....	.....	0.016 (0.009)	.....	0.032 (0.016)
% Hispanic .....	.....	.....	.....	-0.015 (0.011)	.....	-0.035 (0.017)
% Asian .....	.....	.....	.....	-0.054 (0.028)	.....	-0.154 (0.043)
% Male .....	.....	.....	.....	-0.014 (0.002)	.....	-0.028 (0.004)
% Ever Pell .....	.....	.....	.....	0.003 (0.012)	.....	0.050 (0.017)
% First Generation .....	.....	.....	.....	0.001 (0.008)	.....	-0.021 (0.015)
% Independent .....	.....	.....	.....	-0.008 (0.005)	.....	-0.008 (0.008)
FAFSA Family Income (\$1,000) .....	.....	.....	.....	-0.056 (0.013)	.....	-0.087 (0.014)
Intercept	1.265 (0.064)	3.221 (0.217)	6.371 (0.468)	10.974 (1.618)	6.220 (0.423)	12.057 (2.079)
R-squared	0.22	0.33	0.77	0.79	0.64	0.78

Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor's degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV, HEA enrollment in AY16 and AY17.

Table 4.23 reports estimates from identical regression models, but instead using EP as the outcome. Again, each column represents a different regression model that includes different sets of independent variables. Program and institutional characteristics still matter greatly to earnings outcomes.

Institutional effects and credential level together explain 77 percent of the variation in program-level earnings outcomes (column 3). Adding demographic variables explains an additional 7 percentage points of the variation in program-level earnings (column 4). Note that the estimated

regression coefficients will likely overstate the effect of the baseline characteristics on outcomes if these characteristics are correlated with differences in program quality not captured by the crude institution and program characteristics included in the regression.

4.23—REGRESSION ANALYSIS OF THE DEMOGRAPHIC VARIABLES, GE PROGRAMS, OUTCOME: EP [\$1,000s]

	1	2	3	4	5	6
Private, Nonprofit	8.923 (2.420)	1.461 (1.711)	.....	.....	.....	.....
Proprietary	-4.475 (0.611)	-10.632 (0.489)	.....	.....	.....	.....
Credential Level:						
UG Certificates .....	.....	-18.507 (0.835)	-17.315 (1.658)	-7.634 (1.415)	-20.963 (2.350)	-0.592 (1.922)
Associate .....	.....	-6.708 (1.000)	-8.647 (1.333)	-3.698 (1.128)	-11.169 (2.014)	-0.219 (1.271)
Master's .....	.....	11.357 (1.661)	11.083 (2.072)	7.159 (1.778)	11.594 (3.496)	8.787 (2.811)
Doctoral .....	.....	32.585 (3.078)	33.356 (4.576)	20.948 (4.079)	27.749 (6.390)	9.854 (4.553)
Professional .....	.....	41.422 (12.277)	58.755 (13.661)	44.702 (11.280)	66.316 (9.890)	43.113 (11.599)
Grad Certs .....	.....	23.756 (3.225)	13.475 (4.224)	11.475 (3.614)	7.105 (6.533)	7.995 (6.577)
% Black .....	.....	.....	.....	-0.116 (0.047)	.....	-0.201 (0.058)
% Hispanic .....	.....	.....	.....	-0.081 (0.038)	.....	0.015 (0.061)
% Asian .....	.....	.....	.....	0.487 (0.110)	.....	1.376 (0.267)
% Male .....	.....	.....	.....	0.099 (0.007)	.....	0.096 (0.016)
% Ever Pell .....	.....	.....	.....	-0.158 (0.046)	.....	-0.094 (0.064)
% First Generation .....	.....	.....	.....	-0.052 (0.029)	.....	-0.006 (0.049)
% Independent .....	.....	.....	.....	0.146 (0.018)	.....	0.200 (0.032)
FAFSA Family Income (\$1,000) .....	.....	.....	.....	0.168 (0.056)	.....	0.439 (0.071)
Intercept	11.267 (0.514)	27.745 (0.931)	20.126 (1.349)	9.874 (7.507)	22.128 (1.676)	-20.312 (9.392)
R-squared	0.03	0.42	0.77	0.84	0.71	0.87

Notes: Specifications 3 to 6 include fixed effects for each six-digit OPEID number. Bachelor's degree and public are the omitted categories for credential type and control, respectively. Columns 5 and 6 weight programs by average title IV, HEA enrollment in AY16 and AY17.

²⁹⁷ The patterns by race are broadly similar to what was found in analysis of the 2014 final rule. The coefficient on % Black in the final column suggests that a 10-percentage point increase in the

percent of students that are black is associated with a 0.15 higher debt-to-earnings ratio, holding institution, credential level, and the other demographic factors listed constant. Analysis of the

prior rule found an increase of 0.19, though the set of controls is not the same.

Conclusions about the extent to which different factors explain variation in program outcomes can be sensitive to the order in which factors are entered into regressions. However, a variance decomposition analysis (that is insensitive to ordering) demonstrates that program and institutional factors explain the majority of the variance in both the D/E and EP metrics across programs when student characteristics are also included.

Figure 4.3 provides another view, demonstrating that many successful

programs exist and enroll similar shares of low-income students. It shows the distribution of raw Eps for undergraduate certificate programs (the y-axis is in \$1,000s) grouped by the average FAFSA family income of the program. Programs are placed in 20 equally sized groups from lowest to highest FAFSA family income.²⁹⁸ Each dot represents an individual program. The EP of the median program in each income group, indicated by the large black square, is clearly increasing,

reflecting the greater earnings opportunities for students that come from higher income families. However, there is tremendous variation around this median. Even among programs with students that come from the lowest income families, there are clearly programs whose students go on to have earnings success after program completion. This graph demonstrates that demographics are not destiny when it comes to program performance.

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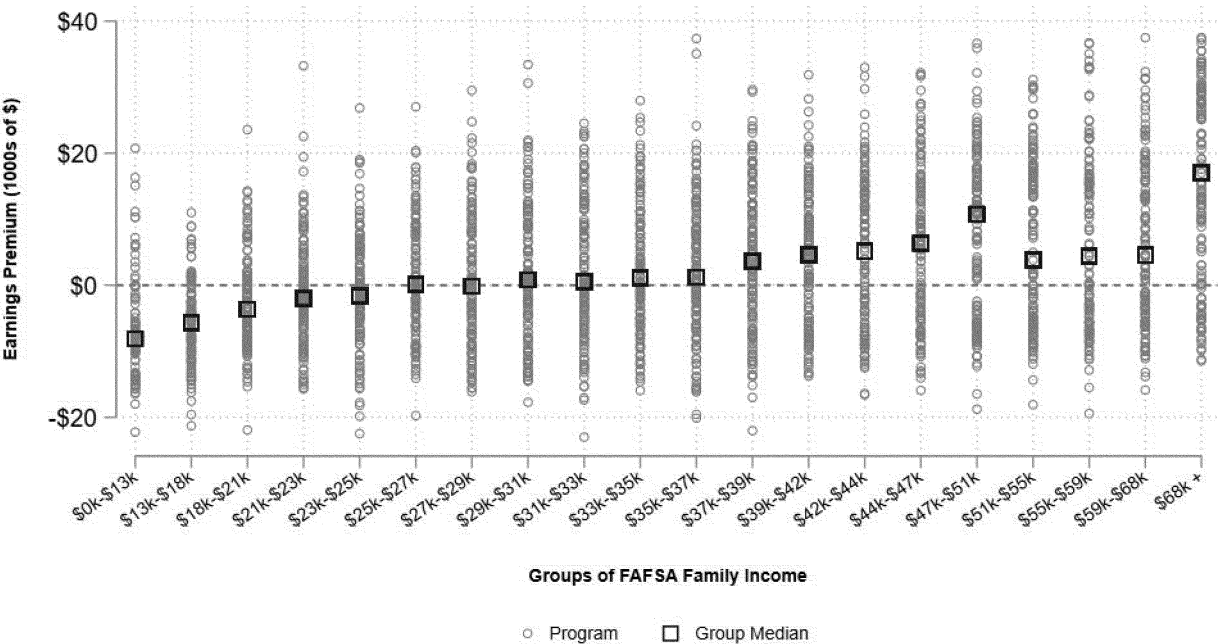


Figure 4.3 Distribution of Earnings Premium by Family Income, Certificate Programs

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Gender Differences

The analysis above showed that programs failing the EP threshold have a higher share of female students. In

Table 4.24, we show descriptively that there are many programs that have similar gender composition but have much higher rates of passage than programs in cosmetology and massage, where failure rates are comparatively

higher. Other programs, such as practical nursing and dental support, are similar in terms of their gender and racial balance but have much higher passage rates.

TABLE 4.24—GENDER AND RACIAL COMPOSITION OF UNDERGRADUATE CERTIFICATE PROGRAMS

	Share of programs failing	Share of all completers who are . . .					
		Black women	Hispanic women	Asian women	Other women	White women	Women (any race)
Teacher Education	0.066	0.226	0.165	0.025	0.094	0.439	0.950

²⁹⁸ Since each of the 20 groups includes the same number of programs, the income range varies across groups.

TABLE 4.24—GENDER AND RACIAL COMPOSITION OF UNDERGRADUATE CERTIFICATE PROGRAMS—Continued

	Share of programs failing	Share of all completers who are . . .					
		Black women	Hispanic women	Asian women	Other women	White women	Women (any race)
Human Development	0.019	0.216	0.284	0.039	0.063	0.366	0.968
Health & Medical Admin	0.441	0.209	0.171	0.029	0.086	0.442	0.938
Medical Assisting	0.535	0.171	0.292	0.030	0.067	0.317	0.876
Laboratory Science	0.211	0.163	0.138	0.030	0.079	0.434	0.843
Practical Nursing	0.034	0.154	0.134	0.033	0.067	0.498	0.886
Cosmetology	0.789	0.150	0.191	0.051	0.059	0.451	0.902
Dental Support	0.428	0.146	0.300	0.025	0.064	0.384	0.920
Business Operations	0.257	0.142	0.166	0.020	0.057	0.395	0.781
Business Administration	0.001	0.128	0.090	0.018	0.058	0.308	0.601
Culinary Arts	0.148	0.123	0.148	0.019	0.060	0.249	0.598
Somatic Bodywork	0.619	0.102	0.127	0.029	0.079	0.418	0.754
Accounting	0.071	0.096	0.141	0.060	0.067	0.361	0.725
Criminal Justice	0.039	0.072	0.079	0.004	0.027	0.151	0.333
Liberal Arts	0.038	0.049	0.205	0.043	0.055	0.262	0.613
Allied Health, Diagnostic	0.015	0.046	0.089	0.016	0.034	0.309	0.494
Information Technology (IT) Admin & Mgmt.	0.046	0.044	0.021	0.009	0.029	0.081	0.183
Ground Transportation	0.005	0.041	0.007	0.003	0.007	0.034	0.092
Computer & Info Svcs	0.074	0.030	0.078	0.012	0.017	0.113	0.250
Precision Metal Working	0.041	0.009	0.007	0.001	0.005	0.036	0.058
Heating, Ventilation, and Air Conditioning (HVAC)	0.025	0.008	0.003	0.000	0.001	0.012	0.025
Fire Protection	0.000	0.007	0.019	0.001	0.005	0.058	0.091
Power Transmission	0.021	0.007	0.006	0.000	0.003	0.019	0.035
Vehicle Maintenance	0.018	0.006	0.011	0.001	0.006	0.027	0.052
Environment Ctrl Tech	0.007	0.006	0.007	0.001	0.005	0.018	0.036

Conclusions of Student Demographic Analysis

On several dimensions, programs that have higher enrollment of underserved students have worse outcomes—lower completion, higher default, and lower post-college earnings levels—due to a myriad of challenges these students face, including fewer financial resources and structural discrimination in the labor market.²⁹⁹ And yet, there is evidence that some institutions aggressively recruited vulnerable students—at times with deceptive marketing and fraudulent data—into programs without sufficient institutional support and instructional investment, placing students at risk for having high debt burdens and low earnings.³⁰⁰ Nonetheless, our analysis demonstrates that GE programs that fail the metrics have particularly bad outcomes that are not explained by student demographics alone.

²⁹⁹ Blau, Francine D. & Kahn, Lawrence M. (2017). The Gender Wage Gap: Extent, Trends, and Explanations. *Journal of Economic Literature*, 55 (3): 789–865. Hillman, N.W. (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education*, 37(2), 169–195. Pager, D., Western, B. & Bonikowski, B. (2009). Discrimination in a Low-Wage Labor Market: A Field Experiment. *American Sociological Review*, 74, 777–799.

³⁰⁰ Cottom, T.M. (2017). *Lower Ed: The Troubling Rise of For-Profit Colleges in the New Economy*. Government Accountability Office (2010). *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices*. U.S. Senate Committee on Health, Education, Labor, and Pensions (2012). *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*.

Furthermore, alternative programs with similar student characteristics but where students have better outcomes exist and serve as good options for students that would otherwise attend low-performing programs. We quantify the extent of these alternative options more directly in the next section. The GE rule aims to protect students from low-value programs and steer them to programs that would be greater engines of upward economic mobility.

Alternative Options Exist for Students To Enroll in High-Value Programs

Measuring Students' Alternative Options

One concern with limiting title IV, HEA eligibility for low-performing GE programs is that such measures could reduce postsecondary opportunities for some students. The Department conducted an analysis to estimate the short-term alternative options that are available to students that might, in the absence of these regulations, enroll in failing programs. The scope of alternative options in the longer term is likely to be broader than the results of this analysis, as other institutions can expand their program offerings and failing programs can improve their performance.

Students deterred from attending a specific program because of a loss of title IV, HEA aid eligibility at that program have several potential alternatives. For programs that are part of a multi-program institution, many may choose to remain at the same institution, but attend a different

program in a related subject that did not lose access to title IV, HEA aid and, therefore, likely offers better outcomes for students in terms of student debt, earnings, or both. Some would stay in their local area and attend a nearby institution that offers a program in the same or related subject. Still others would attend an institution further away, but perhaps in the same State or online.³⁰¹ In order to identify geographical regions where the easiest potential transfer options exist, we used the 3-digit ZIP code (ZIP3) in which each institution is located. Three-digit zip codes designate the processing and distribution center of the United States Postal Service that serves a given geographic area. For each combination of ZIP3, CIP code, and credential level, we determined the number of programs available and the number of programs that would pass both the D/E and EP rates measures. Since programs that do not fail due to insufficient n-size to compute D/E and EP rates represent real options for students at failing programs, we include these programs in our calculations. Importantly, we also include all non-GE programs at public and private nonprofit institutions.³⁰²

³⁰¹ Two other possibilities, which we include in our simulation of budget impacts, is that students continue to enroll in programs without receiving title IV, HEA aid or decline to enroll altogether.

³⁰² Since the 2022 PPD are aggregated to each combination of the six-digit OPEID, four-digit CIP code, and credential level, we do not have precise data on geographic location. For example, a program can have multiple branch locations in different cities and States. At some of these

Continued

Our characterization of programs by the number of alternative options available is also used in the simulations of enrollment shifts that underlie the budget impact and cost, benefit, and transfer estimates, which we describe later.

Table 4.25 reports the distribution of the number of transfer options available to the students who would otherwise attend GE programs that fail at least one of the two metrics. We present estimates for four different ways of conceptualizing and measuring these transfer options. We assume students have more flexibility over the specific field and institution attended than credential level, so all four measures assume students remain in the same

credential level. While not captured in this analysis, it is possible that some students would pursue a credential at a higher level in the same field, thereby further increasing their available options. Half of students in failing GE programs (in 41 percent of failing programs) have at least one alternative non-failing program of the same credential level at the same institution, but in a related field (as indicated by being in the same 2-digit CIP code). More than a quarter have more than one additional option. Two-thirds of students (at 60 percent of the failing programs) have a transfer option passing the GE measures within the same geographic area (ZIP3), credential level,

and narrow field (4-digit CIP code). More than 90 percent of students have at least one transfer option within the same geographic area and credential level when the field is broadened to include programs in the same 2-digit CIP code. Finally, all students have at least one transfer option in the same State, credential level, and 2-digit CIP code. While this last measure includes options that may not be viable for currently enrolled students—requiring moving across the State or attending virtually—it does suggest that at least some options are available for all students, both current and prospective, who would otherwise attend failing GE programs.

TABLE 4.25—SHARE OF PROGRAMS AND ENROLLMENT IN FAILING GE PROGRAMS, BY NUMBER OF ALTERNATIVE OPTIONS

	Same institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
A. Programs Transfer options:				
1 or more	0.41	0.60	0.88	1.00
5 or more	0.03	0.03	0.50	0.96
B. Enrollment Transfer options:				
1 or more	0.50	0.65	0.91	1.00
5 or more	0.03	0.04	0.53	0.95

Table 4.26 repeats this analysis for non-GE programs with at least one failing GE metric. Students considering non-GE programs with D/E or EP metrics that do not meet Department standards may choose to enroll

elsewhere. More than half of students at failing non-GE programs have a non-failing program in the same 4-digit CIP code, credential level, and geographic area that they could choose to enroll in. This share approaches three-quarters if

the field is broadened to include programs in the same two-digit CIP code. Therefore, while the alternative options for non-GE programs are not as numerous as for GE programs, the number of alternatives is still quite high.

TABLE 4.26—SHARE OF PROGRAMS AND ENROLLMENT IN FAILING NON-GE PROGRAMS, BY NUMBER OF TRANSFER OPTIONS

Level	Same institution, cred level, CIP2	Same Zip3, cred level, CIP4	Same Zip3, cred level, CIP2	Same state, cred level, CIP2
A. Programs Transfer options:				
1 or more	0.54	0.47	0.80	0.99
5 or more	0.12	0.05	0.40	0.95
B. Enrollment Transfer options:				
1 or more	0.37	0.49	0.71	0.99
5 or more	0.08	0.05	0.29	0.93

This analysis likely understates the transfer options available to students for three reasons. First, as stated above, it does not consider programs of a different credential level. For example, students who would have pursued a certificate program might opt for an associate degree program that shows

higher earnings. Second, it does not consider the growth of online/distance education programs now available in most fields of study, from both traditional schools and primarily on-line institutions.

Third, we do not consider non-title IV, HEA institutions. Undergraduate

certificate programs in cosmetology represent the largest group of programs without nearby passing options in the same four-digit CIP code, in large part because many of these programs do not pass the GE metrics. Nonetheless, recent data from California and Texas suggest that many students successfully pass

locations, the program could be offered as an online program while other locations offer only in-person programs. Each of these locations would present as a single program in our data set without detail

regarding precise location or format. We do not possess more detailed geographic information that would allow us to address this issue, so we recognize that our analysis of geographic scope and

alternatives may be incomplete and cause us to understate the number of options students have. Nonetheless, the vast majority of alternative options will be captured in our analysis.

licensure exams after completing non-title IV, HEA programs in cosmetology.³⁰³ Non-title IV, HEA cosmetology schools operate in almost all counties in Texas.³⁰⁴ In Florida, non-title IV, HEA cosmetology schools have similar licensure pass rates but much lower tuition.³⁰⁵

Potential Alternative Programs Have Better Outcomes Than Failing Programs

A key motivation for more accountability via this rule is to steer students to higher value programs. As mentioned previously, research has shown that when an institution closed after failing accountability measures based on Cohort Default Rates, students were diverted to schools with better outcomes.³⁰⁶ The Department conducted an analysis of the possible earnings impact of students shifting from programs that fail one of the GE metrics to similar programs that do not fail. For each failing program, we computed the average program-level median earnings of non-failing programs included in the failing program's transfer options, which we refer to as "Alternative Program Earnings." Earnings were weighted by average title IV, HEA enrollment in award years 2016 and 2017. Alternative options were determined in the same way as described above. In computing Alternative Program Earnings, priority was first given to passing programs in the same institution, credential level, and two-digit CIP code if such programs exist and have valid earnings. This assigned Alternative Program Earnings for 20 percent of failing programs. Next

priority was given to programs in the same ZIP3, credential level, and four-digit CIP code, which assigned Alternative Program Earnings for 8 percent of programs. Next was programs in the same ZIP3, credential level, and two-digit CIP code, which assigned Alternative Program Earnings for 14 percent of programs. We did not use the earnings of programs outside the ZIP3 to assign Alternative Program Earnings given the wage differences across regions. It was not possible to compute the earnings of alternative options for the remaining 59 percent of programs primarily because the available options in those instances have insufficient number of completers to report median earnings (47 percent) or because they did not have alternative options in the same ZIP3 (12 percent). For these programs, we set the Alternative Program Earnings equal to the median earnings of high school graduates in the State (the same value used to determine the ET). The percent increase in earnings associated with moving from a failing program to a passing program was computed as the difference between a program's Alternative Program Earnings and its own median earnings, divided by its own median earnings. We set this earnings gain measure to 100 percent in the small number of cases where the median program earnings are zero or the ratio is greater than 100 percent.

Table 4.27 reports the estimated percent difference in earnings between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects, the difference in earnings at passing undergraduate certificate programs and failing programs is about 50 percent. This is unsurprising, given that the EP metric explicitly identifies programs with low earnings, which in practice are primarily certificate programs. Encouragingly, many passing programs exist in the same subject, level, and market that result in much higher earnings than programs that fail. Failing associate degree programs also have similar non-failing programs with much higher earnings. Earnings differences are still sizable and positive, though not quite as large for higher credentials. Passing GE bachelor's degree programs

have 31 percent higher earnings than bachelor's degree programs that fail the GE metrics.

Table 4.28 reports similar estimates for non-GE programs. The earnings difference between failing and passing non-GE programs is more modest than for GE programs, but still significant: 21 percent across all credential levels, ranging from close to zero for Doctoral programs to 30 percent for bachelor's degree programs.

We use a similar process to compute the percent change in average program-level median debt between failing GE or non-GE programs and alternative programs.³⁰⁷ Tables 4.29 and 4.30 report the percent change in debt between alternative program options and failing programs, separately by two-digit CIP and credential level. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. Large differences in debt are seen at all degree levels (other than professional), with modest differences for undergraduate certificate programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, relative to failing programs, alternative programs have lower debt levels, with the differences (the percent difference in debt between alternative and failing programs) ranging from 24 percent (Professional programs) to 35 percent (Doctoral programs). Failing associate degree programs have debt that is 12 percent higher than in passing programs.

While these differences do not necessarily provide a completely accurate estimate of the actual earnings gain or debt reduction that students would experience by shifting programs, they suggest alternative options exist that provide better financial outcomes than programs that fail the D/E and EP metrics.

³⁰⁷ The only exception being that we use the debt for alternative programs in the same credential level, same two-digit CIP code, and State to impute alternative program debt if such a program is not available or calculable in students' ZIP3. This is because there is no other natural benchmark debt level analogous to the ET used to compute alternative program earnings.

³⁰³ In California, 55 percent of individuals passing either the practical or written components of the licensure test are from title IV, HEA schools according to Department analysis using licensing exam data retrieved from www.barbercosmo.ca.gov/schools/schls_rslts.shtml on December 7, 2022.

³⁰⁴ Cellini, S.R. & Onwukwe, B. (Aug. 2022). Cosmetology Schools Everywhere: Most Cosmetology Schools Exist Outside of the Federal Student Aid System. Postsecondary Equity & Economics Research Project working paper.

³⁰⁵ Cellini, S.R. & Goldin, C. (2014). Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges. *American Economic Journal: Economic Policy*, 6(4), 174–206.

³⁰⁶ Cellini, S.R., Darolia, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy*, 12(2): 46–83.

TABLE 4.27—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

cip2	Credential level							Total
	UG certificates	Associate	Bachelor's	Master's	Doctoral	Professional	Grad certs	
1 .....	.....	.....	.....	.....	.....	.....	.....	.....
3 .....	.....	.....	-0.18	.....	.....	.....	.....	-0.18
9	0.12	.....	0.24	0.24	.....	.....	.....	0.17
10	0.42	0.19	-0.01	-0.38	.....	.....	.....	0.07
11	0.48	0.26	0.79	-0.62	.....	.....	.....	0.45
12	0.53	0.12	-0.18	.....	.....	.....	1.00	0.52
13	0.38	0.34	0.13	0.46	0.18	.....	-0.04	0.21
14 .....	.....	-0.01	-0.36	.....	.....	.....	.....	-0.19
15	0.14	-0.10	.....	.....	.....	.....	.....	0.11
16 .....	.....	.....	-0.03	.....	.....	.....	.....	-0.03
19	0.65	0.29	0.13	-0.28	-0.55	.....	.....	0.11
22	0.33	-0.03	-0.04	.....	.....	0.22	-0.60	0.00
23	0.57	-0.07	0.38	-0.09	.....	.....	.....	0.44
24	0.06	.....	.....	.....	.....	.....	.....	0.06
25 .....	.....	.....	-0.03	.....	.....	.....	.....	-0.03
26 .....	.....	.....	.....	.....	.....	.....	-0.32	-0.32
30 .....	.....	0.15	-0.07	.....	.....	.....	-0.34	-0.04
31	0.51	-0.00	.....	.....	.....	.....	.....	0.09
32	0.32	.....	.....	.....	.....	.....	.....	0.32
39	0.40	.....	-0.03	-0.20	.....	.....	.....	0.04
42 .....	.....	.....	0.06	0.25	-0.52	.....	-0.34	-0.04
43	0.22	0.19	0.24	0.41	-0.56	.....	.....	0.21
44 .....	.....	0.04	0.43	0.62	0.46	.....	-0.50	0.37
45 .....	.....	.....	0.23	-0.24	.....	.....	.....	0.06
46	0.40	.....	.....	.....	.....	.....	.....	0.40
47	0.39	0.14	.....	.....	.....	.....	.....	0.33
48	0.25	.....	.....	.....	.....	.....	.....	0.25
49	0.77	.....	.....	.....	.....	.....	.....	0.77
50	0.38	0.22	0.27	0.46	.....	.....	.....	0.29
51	0.51	0.83	0.75	0.87	-0.30	-0.06	0.08	0.60
52	0.50	0.31	0.61	0.22	0.34	.....	0.20	0.38
54 .....	.....	.....	-0.13	.....	.....	.....	.....	-0.13
Total	0.50	0.47	0.30	0.54	-0.40	-0.03	-0.11	0.43

TABLE 4.28—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

cip2	Credential level					Total
	Associate	Bachelor's	Master's	Doctoral	Professional	
1	0.31	0.12	.....	.....	.....	0.16
3 .....	.....	0.38	-0.14	.....	.....	0.31
4 .....	.....	.....	-0.31	.....	.....	-0.31
5 .....	.....	0.02	.....	.....	.....	0.02
9	0.12	0.24	-0.02	.....	.....	0.20
10	0.14	-0.01	.....	.....	.....	0.11
11	0.36	1.00	.....	.....	.....	0.40
12	0.25	.....	.....	.....	.....	0.25
13	0.22	0.32	0.21	-0.12	.....	0.23
15	0.83	.....	.....	.....	.....	0.83
16	0.03	0.43	.....	.....	.....	0.40
19	0.18	0.40	-0.42	.....	.....	0.27
22	0.00	-0.08	-0.26	-0.59	-0.07	-0.13
23	0.38	0.23	-0.18	.....	.....	0.20
24	0.15	0.10	-0.54	.....	.....	0.14
26	0.13	0.28	0.16	-0.70	.....	0.22
30	0.12	0.06	-0.17	.....	.....	0.07
31	0.10	0.22	-0.22	.....	.....	0.18
38	-0.05	-0.10	.....	.....	.....	-0.07
39	0.55	0.49	-0.02	.....	0.20	0.38
40 .....	.....	0.58	.....	.....	.....	0.58
41	0.08	.....	.....	.....	.....	0.08
42	0.31	0.04	-0.24	-0.35	.....	0.07
43	0.19	-0.04	0.06	.....	.....	0.09
44	0.21	-0.16	-0.08	.....	.....	0.10

TABLE 4.28—PERCENT EARNINGS DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL—Continued

cip2	Credential level					Total
	Associate	Bachelor's	Master's	Doctoral	Professional	
45	0.09	0.47	− 0.12	.....	.....	0.23
47	0.38	.....	.....	.....	.....	0.38
50	0.23	0.40	0.31	− 0.29	.....	0.37
51	0.62	0.78	0.57	0.26	0.11	0.46
52	0.15	0.48	0.72	.....	.....	0.22
54 .....	.....	0.06	− 0.19	.....	.....	− 0.09
Total	0.22	0.27	0.26	0.07	0.04	0.21

TABLE 4.29—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

cip2	Credential level							Total
	UG certificates	Associate	Bachelor's	Master's	Doctoral	Professional	Grad certs	
1	0.00	.....	.....	.....	.....	.....	.....	0.00
3 .....	.....	.....	− 0.65	.....	.....	.....	.....	− 0.65
9	0.06	.....	− 0.26	− 0.01	.....	.....	.....	− 0.04
10	0.15	0.63	− 0.32	.....	.....	.....	.....	− 0.15
11	0.21	− 0.36	− 0.23	− 0.79	.....	.....	.....	− 0.14
12	− 0.23	− 0.49	0.13	.....	.....	.....	0.00	− 0.23
13	− 0.28	− 0.89	− 0.31	− 0.36	− 0.18	.....	− 0.20	− 0.39
14 .....	.....	0.01	− 0.58	.....	.....	.....	.....	− 0.30
15	− 0.10	− 0.69	.....	.....	.....	.....	.....	− 0.17
16 .....	.....	.....	− 0.52	.....	.....	.....	.....	− 0.52
19	− 0.05	− 0.26	− 0.24	− 0.30	.....	.....	.....	− 0.23
22	1.00	− 0.60	− 0.26	.....	.....	− 0.40	.....	− 0.47
23	0.00	− 0.82	− 0.33	0.00	.....	.....	.....	− 0.18
24	0.00	.....	.....	.....	.....	.....	.....	0.00
25 .....	.....	.....	.....	.....	.....	.....	.....	.....
26 .....	.....	.....	.....	.....	.....	.....	− 0.25	− 0.25
30 .....	.....	− 0.91	− 0.54	.....	.....	.....	.....	− 0.58
31	− 0.83	− 0.75	.....	.....	.....	.....	.....	− 0.80
32	0.00	.....	.....	.....	.....	.....	.....	0.00
39	0.59	.....	.....	.....	.....	.....	.....	0.59
42 .....	.....	.....	− 0.49	− 0.20	− 0.16	.....	− 0.77	− 0.35
43	− 0.57	− 0.70	− 0.42	− 0.10	.....	.....	.....	− 0.53
44 .....	.....	− 0.74	− 0.09	− 0.32	− 0.38	.....	.....	− 0.23
45 .....	.....	.....	− 0.11	.....	.....	.....	.....	− 0.11
46	0.07	.....	.....	.....	.....	.....	.....	0.07
47	0.05	− 0.24	.....	.....	.....	.....	.....	0.00
48	− 0.21	.....	.....	.....	.....	.....	.....	− 0.21
49	0.33	.....	.....	.....	.....	.....	.....	0.33
50	0.21	− 0.59	− 0.33	− 0.23	.....	.....	.....	− 0.31
51	0.01	− 0.16	− 0.39	− 0.48	− 0.64	0.60	− 0.43	− 0.10
52	− 0.14	− 0.42	− 0.33	− 0.17	− 0.17	.....	− 0.27	− 0.35
54 .....	.....	.....	− 0.22	.....	.....	.....	.....	− 0.22
Total	− 0.10	− 0.38	− 0.36	− 0.36	− 0.22	0.48	− 0.34	− 0.22

TABLE 4.30—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL

2-digit CIP code	Credential level					Total
	Associate	Bachelor's	Master's	Doctoral	Professional	
1	− 0.37	− 0.14	.....	.....	.....	− 0.19
3 .....	.....	0.02	− 0.53	.....	.....	− 0.06
4 .....	.....	.....	− 0.35	.....	.....	− 0.35
5 .....	.....	− 0.12	.....	.....	.....	− 0.12
9	0.64	− 0.22	− 0.37	.....	.....	− 0.13
10	− 0.19	− 0.11	.....	.....	.....	− 0.18
11	− 0.29	− 0.42	.....	.....	.....	− 0.30
12	0.08	.....	.....	.....	.....	0.08

TABLE 4.30—PERCENT DEBT DIFFERENCE BETWEEN TRANSFER OPTIONS AND FAILING NON-GE PROGRAMS, BY CIP AND CREDENTIAL LEVEL—Continued

2-digit CIP code	Credential level					Total
	Associate	Bachelor's	Master's	Doctoral	Professional	
13	0.24	− 0.13	− 0.30	− 0.03	.....	0.05
15	0.22	.....	.....	.....	.....	0.22
16	− 0.27	0.19	.....	.....	.....	0.15
19	0.07	0.21	− 0.39	.....	.....	0.14
22	− 0.55	− 0.28	.....	− 0.16	− 0.26	− 0.28
23	0.19	− 0.04	− 0.33	.....	.....	− 0.04
24	0.19	− 0.10	.....	.....	.....	0.16
26	0.78	0.11	− 0.28	.....	.....	0.16
30	− 0.15	− 0.16	0.00	.....	.....	− 0.15
31	0.80	− 0.22	.....	.....	.....	0.12
38 .....	.....	− 0.26	.....	.....	.....	− 0.26
39	− 0.67	− 0.03	− 0.29	.....	0.00	− 0.10
40 .....	.....	1.00	.....	.....	.....	1.00
41 .....	.....	.....	.....	.....	.....	.....
42	0.33	− 0.11	− 0.04	− 0.17	.....	− 0.03
43	− 0.22	− 0.30	− 0.19	.....	.....	− 0.25
44	− 0.26	− 0.23	− 0.16	.....	.....	− 0.24
45	− 0.08	− 0.19	− 0.53	.....	.....	− 0.18
47	0.21	.....	.....	.....	.....	0.21
50	0.25	− 0.02	− 0.28	.....	.....	− 0.01
51	0.01	− 0.03	− 0.09	− 0.38	− 0.22	− 0.11
52	− 0.15	− 0.26	− 0.09	.....	.....	− 0.17
54 .....	.....	0.39	− 0.79	.....	.....	0.10
Total	0.12	− 0.07	− 0.19	− 0.32	− 0.23	0.02

Transfer Causes Net Enrollment Increase in Some Sectors

The aggregate change in enrollment overall, by sector, and by institution would likely be less than that implied by the program- and institution-level results presented in the “Results of GE Accountability” section above because those do not consider that many students would likely transfer to passing programs or even remain enrolled at failing programs in response to a program losing title IV, HEA eligibility. The Department simulated the likely destinations of students enrolled in failing GE programs. Based on the research literature and described more fully in “Student Response Assumptions” subsection in Section 5 below, we use assumptions about the share of students that transfer to another program, remain enrolled in the original program, or drop out entirely if a program loses title IV, HEA eligibility. These student mobility assumptions differ according to the number of alternative options that exist and are the same assumptions used in the Net Budget Impact section.

Using these assumptions, for every failing GE program, we estimate the title IV, HEA enrollment from that program that would remain, dropout, or transfer to another program. Our notion of “transfers” includes both current students and future students who attend an alternative program instead of one

that fails the GE metrics. The number of transfers is then reallocated to specific other non-failing GE and non-GE programs in the same institution (OPEID6), credential level, and 2-digit CIP code. If multiple such programs exist, transfer enrollment is allocated based on the share of initial title IV, HEA enrollment in these programs. If no alternative options exist using this approach, the transfer enrollment is allocated to non-failing GE and non-GE programs in the same geographic area (ZIP3), credential level, and 4-digit CIP code. Again, initial title IV, HEA enrollment shares are used to allocate transfer enrollment if multiple such alternative programs exist. These two approaches reallocate approximately 80 percent of the transfer enrollments we would expect from failing GE programs. Finally, new title IV, HEA enrollment is computed for each program that sums existing enrollment (or retained enrollment, in the case of failing GE programs) and the allocated transfer enrollment.

Table 4.31 summarizes these simulation results, separately by type of institution.³⁰⁸ Without accounting for transfers or students remaining in failing GE programs, aggregate title IV, HEA enrollment drops by 715,200 (3.7

percent), with at least some enrollment declines in all sectors. This will greatly overstate the actual enrollment decline associated with the regulation because it assumes that students leave postsecondary education in response to their program failing a GE metric. The final column simulates enrollment after accounting for transfers within institution (to similar programs) and to similar programs at other geographically proximate institutions, along with permitting some modest enrollment retention at failing programs. In this scenario, aggregate enrollment declines by only 231,000 (1.2 percent) due to the rule.³⁰⁹ Importantly, some sectors experience an enrollment increase as students transfer from failing to passing programs. For instance, public 2-year community colleges are simulated to experience a 30,000-student enrollment increase once transfers are accounted for rather than a 30,000-student decrease when they are not. HBCUs are simulated to gain 1,200 students rather than lose 700.

³⁰⁸ Programs at foreign institutions are excluded from Table 4.31 as they do not have an institutional type.

³⁰⁹ Note that since many failing programs result in earnings lower than those of the typical high school graduate, students leaving postsecondary education still may be better off financially compared to staying in a failing program.

TABLE 4.31—ENROLLMENT WITH AND WITHOUT TRANSFERS, BY SECTOR

	Number of inst.	Initial enrollment	No transfers or retention	+ within institution CIP2 transfers	+ within ZIP3–CIP4 transfers
Sector of institution:					
Public, 4-year + ...	700	8,186,900	8,179,700	8,184,900	8,208,800
Private not-for-profit, 4-year + ...	1,400	4,002,400	3,994,500	3,999,200	4,004,500
Private for-profit, 4-year + ...	200	1,298,900	951,100	1,147,900	1,155,900
Public, 2-year	900	5,025,200	4,995,600	5,013,300	5,054,900
Private not-for-profit, 2-year	100	97,200	74,900	91,200	92,100
Private for-profit, 2-year	300	290,900	195,600	250,600	255,900
Public, <2-year	200	42,600	41,300	42,100	46,200
Private not-for-profit, <2-year	<50	11,600	6,200	8,300	8,500
Private for-profit, <2-year	1,000	278,400	85,700	151,100	178,200
Total	4,900	19,234,100	18,524,500	18,888,500	19,004,900

Note: Enrollment counts have been rounded to the nearest 100.

5. Discussion of Costs, Benefits, and Transfers

Description of Baseline

In absence of the final regulations, many students enroll in low-financial-value programs where they either end up not being able to secure a job that leads to higher earnings, take on unmanageable debt, or both. Many of these students default on their student loans, with negative consequences for their credit and financial security and at substantial costs to the taxpayers. Many

students with insufficient earnings to repay their debts would be eligible to have their payments reduced and eventually have their loans forgiven through income-driven repayment (IDR). This shields low-income borrowers from the consequences of unaffordable debts but shifts the financial burden onto taxpayers.

We have considered the primary costs, benefits, and transfers for the following groups or entities that will be affected by the final regulations:

- Students

- Institutions
- State and local governments
- The Federal Government

We first discuss the anticipated benefits of the final regulations, including improved market information. We then assess the expected costs and transfers for students, institutions, the Federal Government, and State and local governments. Table 5.1 below summarizes the major benefits, costs, and transfers and whether they are quantified in our analysis or not.

TABLE 5.1—SUMMARY OF COSTS, BENEFITS, AND TRANSFERS FOR FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT FINAL REGULATIONS

	Students	Institutions	State and local governments	Federal government
Benefits				
Quantified	Earnings gain from shift to higher value programs.	.....	State tax revenue from higher earnings.	Federal tax revenue from higher earnings.
Not quantified	Lower rates of default, higher rates of family & business formation, higher retirement savings, saving of opportunity cost for non-enrollees.	Increased enrollment and revenue associated with new enrollments from improved information about value; improvements in program quality.		
Costs				
Quantified	Time for acknowledgment	Time for acknowledgment	Additional spending at institutions that absorb students from failing programs.	Implementation of data collection and information website.
Not quantified	Time, logistics, credit loss associated with program transfer.	Investments to improve program quality; decreased enrollment and revenue associated with fewer new enrollments from improved information about value.		
Transfers				
Quantified .....	.....	Aid money from failing programs to govt for non-enrollments; aid money from failing to better-value programs for transfers.	.....	Aid money from failing programs to govt for non-enrollments.
Not quantified	Increased loan payments associated with less IDR forgiveness.	Aid money from failing programs to State govt for non-enrollments.	Aid money from failing programs to State govt for non-enrollments.	Increased loan payments associated with less IDR forgiveness and fewer defaults.

Benefits

We expect the primary benefits of both the accountability and

transparency components of the final regulation to derive from a shift of students from low-value to high-value

programs or, in some cases, a shift away from low-value postsecondary programs to non-enrollment. This shift will be

due to improved and standardized market information about GE and non-GE programs. This will increase the transparency of student outcomes for better decision-making by current students, prospective students, and their families; the public, taxpayers, and the Government; and institutions. Furthermore, the accountability component should improve program quality by directly eliminating the ability of low-value GE programs to participate in the title IV, HEA programs. Finally, both the transparency and accountability provisions of the rule should lead to a more competitive postsecondary market that encourages improvement, thereby, improving the outcomes and/or reducing the cost of existing programs that continue to enroll students.

Benefits to Students

Under the final regulation, students, prospective students, and their families will have extensive, comparable, and reliable information about the outcomes of students who enroll in GE and non-GE programs such as cost, debt, earnings, completion, and repayment outcomes. This information should assist them in choosing institutions and programs where they believe they are most likely to complete their education and achieve the earnings they desire, while having debt that is manageable. This information should result in more informed decisions based on reliable information about a program's outcomes.

Students will potentially benefit from this information via higher earnings, lower costs and less debt, and better program quality. This can happen through three channels. First, students benefit by transferring to passing programs. Second, efforts to improve programs should lead to better labor market outcomes, such as improved job prospects and higher earnings, by offering better student services, working with employers so graduates have needed skills, improving program quality, and helping students with career planning. This may happen as institutions improve programs to avoid failing the D/E or EP measures or simply from programs competing more for students based on quality, with the rule providing greater transparency about program quality. As a result of these enrollment shifts, students who graduate with manageable debts and adequate earnings should be more likely to pay back their loans, marry, buy a home, and invest in their futures.³¹⁰

Finally, some students that chose not to enroll in low-value programs will save opportunity costs by not investing their time in programs that do not lead to good outcomes. While these other factors are certainly important to student wellbeing, our analysis focuses on the improvement in earnings associated with a shift from low-value programs to higher value programs.

Benefits to Institutions

Institutions offering high-performing programs to students are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs without excessive spending on marketing and recruitment. Additionally, institutions that work to improve the quality of their programs could see increased revenues from improved retention and completion and therefore, additional tuition revenue.

We believe the information transparency will increase enrollment and revenues in well-performing programs. Improved information should increase market demand for programs that produce good outcomes. While the increases or decreases in revenues for institutions are benefits or costs from the institutional perspective, they are transfers from a social perspective. However, any additional demand for education due to overall program quality improvement would be considered a social benefit.

The improved information that will be available as a result of the regulations will also benefit institutions' planning and improvement efforts. Information about student outcomes will help institutions determine whether it would be prudent to expand, improve quality, reduce costs, or eliminate various programs. Institutions may also use this information to offer new programs in fields where students are experiencing positive outcomes, including higher earnings and steady employment. Additionally, institutions will be able to identify and learn from programs that produce exceptional results for students.

Capital. Federal Reserve Bank of N.Y. Staff Report No. 912. Gicheva, D. (2016). Student Loans or Marriage? A Look at the Highly Educated. *Economics of Education Review*, 53, 207–2016. Gicheva, D. & Thompson, J. (2015). The Effects of Student Loans on Long-Term Household Financial Stability. In Hershbein, B. & Hollenbeck, K. (Ed.). *Student Loans and the Dynamics of Debt* (137–174). W.E. Upjohn Institute for Employment Research: Kalamazoo, MI. Hillman, NW (2014). College on Credit: A Multilevel Analysis of Student Loan Default. *Review of Higher Education* 37(2), 169–195.

Mezza, A., Ringo, D., Sherlund, S. & Sommer, K. (2020). Student Loans and Homeownership. *Journal of Labor Economics*, 38(1): 215–260.

Benefits to State and Local Governments

State and local governments will benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. They are also likely to benefit from reduced costs because, as institutions improve the quality of their programs, their graduates are likely to have improved job prospects and higher earnings, meaning that governments are likely to be able to spend less on unemployment benefits and other social safety net programs. State and local governments will also experience improved oversight of their investments in postsecondary education. Additionally, State, and local postsecondary education funding could be allocated more efficiently to higher-performing programs. State and local governments would also experience a better return on investment on their dollars spent on financial aid programs as postsecondary program quality improves or if students reallocate to higher-performing programs.

Benefits to Federal Government

The Federal Government should benefit from additional tax revenue associated with higher student earnings and students' increased ability to spend money in the economy. Another primary benefit of the regulations will be improved oversight and administration of the title IV, HEA programs, particularly the new data reported by institutions. Additionally, Federal taxpayer funds should be allocated more efficiently to higher-performing programs, where students are more likely to graduate with manageable amounts of debt and gain stable employment in a well-paying field, increasing the positive benefits of Federal investment in title IV, HEA programs.

The taxpayers and the Government will also benefit from improved information about GE programs. As the funders and stewards of the title IV, HEA programs, these parties have an interest in knowing whether title IV, HEA program funds are benefiting students. The information provided will allow for more effective monitoring of the Federal investment in GE programs.

Costs

Costs to Students

Students may incur some costs as a result of the final regulations. One cost is that all title IV, HEA students attending eligible non-GE programs that fail the D/E metric will be required to acknowledge having seen information about program outcomes before students

³¹⁰ Chakrabarti, R., Fos, V., Liberman, A. & Yannelis, C. (2020). Tuition, Debt, and Human

sign enrollment agreements. Students attending GE programs with at least one failing metric will additionally be required to acknowledge a warning that the program could lose title IV, HEA eligibility. The acknowledgment is the main student cost we quantify in our analysis. We expect that over the long-term, all students will have increased access to programs that lead to successful outcomes. In the short term, students in failing programs could incur search and logistical costs associated with finding and enrolling in an alternative program, whether that be a GE or non-GE program. Further, at least some students may be temporarily left without transfer options. We expect that many of these students will re-enter postsecondary education later, but we understand that some students may not continue. We do not quantify these costs associated with searching for and transferring to new postsecondary programs.

Costs to Institutions

Under the regulations, institutions will incur costs as they make changes needed to comply, including costs associated with the reporting, disclosure, and acknowledgment requirements. These costs could include (1) Training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new, or modifications to existing, software or equipment, and (4) procurement of external services.

As described in the Preamble, much of the necessary information required from GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements will be reasonable. Furthermore, 88 percent of public and 47 percent of private nonprofit institutions operated at least one GE program and have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, for the first six years after the effective date of the rule, the Department provides flexibility for institutions to avoid reporting data on students who completed programs in the past, and instead to use data on more recent completer cohorts to estimate median debt levels. In part, this is intended to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

Our initial estimate of the time cost of these reporting requirements for

institutions is 5.0 million hours initially and then 1.4 million hours annually after the first year. The Department recognizes that institutions may have different approaches and processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. Many institutions may have systems that can be queried or existing reports that can be adapted to meet these reporting requirements. On the other hand, some institutions may still have data entry processes that are very manual in nature and generating the information for their programs could involve many more hours and resources. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others. The total reporting burden will be distributed across institutions depending on the setup of their systems and processes. We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level.

Table 5.2 presents the Department's estimates of the hours associated with the reporting requirements. The reporting process will involve staff members or contractors with different skills and levels of responsibility. We have estimated this using Bureau of Labor statistics median hourly wage for Education Administrators, Post-Secondary of \$48.05.³¹¹

TABLE 5.2—ESTIMATED HOURS AND WAGE RATE FOR REPORTING REQUIREMENTS

Process	Hours	Hours basis
Review systems and existing reports for adaptability for this reporting	10	Per institution.
Develop reporting query/result template:		
Program-level reporting	15	Per institution.
Student-level reporting	30	Per institution.
Run test reports:		
Program-level reporting	0.25	Per institution.
Student-level reporting	0.5	Per institution.
Review/validate test report results:		
Program-level reporting	10	Per institution.
Student-level reporting	20	Per institution.
Run reports:		
Program-level reporting	0.25	Per program
Student-level reporting	0.5	Per program
Review/validate report results:		
Program-level reporting	2	Per program
Student-level reporting	5	Per program
Certify and submit reporting	10	Per institution.

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first

reporting cycle includes information from several prior years, means that the expected burden should decrease

significantly after the first reporting cycle. We estimate that the hours associated with reviewing systems,

³¹¹ Available at <https://www.bls.gov/oes/current/oes119033.htm>.

developing or updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. After initial reporting is completed, the institution will need

to confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation, or other items on an ongoing basis. We expect that process would be less

burdensome than initially establishing the reporting. Table 5.3 presents estimates of reporting burden for the initial year and subsequent years under § 668.408.

TABLE 5.3.1—ESTIMATED REPORTING BURDEN FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	121	700	33,286	1,599,380
Proprietary 2-year	1,194	3,490	222,516	10,691,870
Public 2-year	1,036	37,612	1,265,169	60,791,370
Private 4-year	1,290	49,000	1,642,518	78,922,966
Proprietary 4-year	177	2,970	109,018	5,238,303
Public 4-year	700	56,088	1,805,753	86,766,432
Total	4,518	149,860	5,078,259	244,010,321

TABLE 5.3.2—ESTIMATED REPORTING BURDEN FOR SUBSEQUENT REPORTING CYCLES

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	121	700	13,411	644,399
Proprietary 2-year	1194	3490	105,852	5,086,165
Public 2-year	1036	37612	359,869	17,291,705
Private 4-year	1290	49000	464,890	22,337,965
Proprietary 4-year	177	2970	34,700	1,667,311
Public 4-year	700	56088	480,882	23,106,380
Total	4,518	149,860	1,459,603	70,133,924

These burden estimates are not reduced for the exemption that allows institutions to not report on programs with less than thirty completers across the most recent four award years. We expect this provision would reduce the burden on foreign institutions and others across a variety of fields and institutional characteristics.

As described in the section titled “Paperwork Reduction Act of 1995,” the final estimates of reporting costs will be cleared at a later date through a separate information collection. Institutions’ share of the annual costs associated with disclosures, acknowledgment for all programs, and warnings and acknowledgment for GE programs are estimated to be \$12 million, \$0.05 million, and \$0.76 million, respectively. Note that most of the burden associated with acknowledgments will fall on students, not institutions. These costs are discussed in more detail in the section titled “Paperwork Reduction Act of 1995.”

Institutions that make efforts to improve the outcomes of failing programs could face additional costs. For example, institutions that reduce the tuition and fees of programs would see decreased revenue. For students who are currently enrolled in a program, the reduced price would be a transfer to them in the form of a lower cost of

attendance. In turn, some of this price reduction would be a transfer to the government if the tuition was being paid for with title IV, HEA funds. An institution could also choose to spend more on curriculum development to, for example, link a program’s content to the needs of in-demand and well-paying jobs in the workforce, or allocate more funds toward other functions. These other functions could include hiring better faculty; providing training to existing faculty; offering tutoring or other support services to assist struggling students; providing career counseling to help students find jobs; acquiring more up-to-date equipment; or investing in other areas where increased spending could yield improved performance. However, as mentioned in the benefits section, institutions that improve program quality could see increased tuition revenue with improved retention and completion.

The costs of program changes in response to the regulations are difficult to quantify generally, as they would vary significantly by institution and ultimately depend on institutional behavior. For example, institutions with all passing programs could elect to commit only minimal resources toward improving outcomes. On the other hand, they could instead make substantial investments to expand passing programs

and meet increased demand from prospective students, which could result in an attendant increase in enrollment costs. Institutions with failing programs could decide to devote significant resources toward improving performance, depending on their capacity, or could instead elect to discontinue one or more of the programs. However, as mentioned previously, some of these costs might be offset by increased revenue from improved program quality. Given these ambiguities, we do not quantify costs (or benefits) associated with program quality improvements.

Finally, some poorly performing programs will experience a reduction in enrollment that is not fully offset by gains to other institutions (which will experience increased enrollment) or the Federal Government (which will experience lower spending on Title IV, HEA aid). These losses should be considered as costs for institutions.

Costs to States and Local Governments

State and local governments may experience increased costs as enrollment in well-performing programs at public institutions increases as a result of some students transferring from failing programs, including those offered by for-profit institutions.

The Department recognizes that a shift in students to public institutions could result in higher State and local government costs, but the extent of this is dependent on student transfer patterns, State and local government choices, and the existing capacity of public programs. If States choose to expand the enrollment capacity of passing programs at public institutions, it is not necessarily the case that they would face marginal costs that are similar to their average cost or that they would only choose to expand through traditional brick-and-mortar institutions. The Department continues to find that many States across the country are experimenting with innovative models that use different methods of instruction and content delivery, including online offerings, that allow students to complete courses faster and at lower cost. Furthermore, enrollment shifts would likely be towards community colleges, where declining enrollment has created excess capacity. An under-subscribed college may see greater efficiency gains from increasing enrollment and avoid other costly situations such as unused classroom space or unsustainably low enrollment. Forecasting the extent to which future growth would occur in traditional settings versus online education or some other model is outside the scope of this analysis. Nonetheless, we do include the additional instructional cost associated with a shift from failing to passing programs in our analysis, some of which will fall on State and local governments.

Costs to Federal Government

The main costs to the Federal Government involve setting up the infrastructure to handle and process additional information reported by institutions, compute rates and other information annually, and maintain a program information website and acknowledgment process. Most of these activities will be integrated into the

Department's existing processes. We estimate that the total implementation cost will be \$30 million.

Transfers

Enrollment shifts between programs, and potentially to non-enrollment, will transfer resources between students, institutions, State and local governments, and the Federal Government. We model three main transfers. First, if some students drop out of postsecondary education or remain in programs that lose eligibility for title IV, HEA Federal student aid, there would be a transfer of Federal student aid from those students to the Federal Government. Second, if students change institutions based on program performance, or title IV, HEA eligibility, revenues and expenses associated with students would transfer between postsecondary institutions. Finally, additional earnings associated with movement from low- to high-value programs would result in greater loan repayment by borrowers. This is through both lower default rates and a lower likelihood of loan forgiveness through existing IDR plans. This represents a transfer from students to the Federal Government. We do not quantify the transfers between students and State governments associated with changes in State-financed student aid, as such programs differ greatly across States. Transfers between students and States could be net positive for States if fewer students apply for, or need, State aid programs or they could be negative if enrollment shifts to State programs results in greater use of State aid.

6. Methodology for Budget Impact and Estimates of Costs, Benefits, and Transfers

In this section we describe the methodology used to estimate the budget impact as well as the main costs, benefits, and transfers. Our modeling and impact only include the Financial

Value Transparency and GE parts of the final rule.

The main behaviors that drive the direction and magnitudes of the budget impacts of the rule and the quantified costs, benefits, and transfers are the performance of programs and the enrollment and borrowing decisions of students. The Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA funds per student to estimate the budget impact of these regulations. Additional assumptions about the earnings outcomes and instructional spending associated with program enrollment and tax revenue from additional earnings were used to quantify costs, benefits, and transfers. The model (1) takes into account a program's past results under the D/E and EP rates measure to predict future results, and (2) tracks a GE program's cumulative results across multiple cycles of results to determine title IV, HEA eligibility.

Assumptions

We made assumptions in four areas in order to estimate the budget impact of the rule: (1) Program performance under the rule; (2) Student behavior in response to program performance; (3) Borrowing of students under the rule; and (4) Enrollment growth of students in GE and non-GE programs. Table 6.1 below provides an overview of the main categories of assumptions and the sources. Assumptions that are included in our sensitivity analysis are also highlighted. Wherever possible, our assumptions are based on past performance and student enrollment patterns in data maintained by the Department or documented by scholars in prior research. Additional assumptions needed to quantify costs, benefits, and transfers are described later when we describe the methodology for those calculations.

TABLE 6.1—MAIN ASSUMPTIONS AND SOURCES

Category	Detail	Source	Included in sensitivity?
Assumptions for Budget Impact and Calculation of Costs, Benefits, and Transfers			
Program Performance at Baseline ..	Share in each performance category at baseline (GE and non-GE programs).	ED data	No.
Enrollment Growth	Annual enrollment growth rate by sector/level and year	Sector-level projections based on Department data.	No.
Program transition between performance categories.	AY2025–26, AY2026–27 onward, separately by loan risk group and for GE and non-GE programs.	Based on Department data + program improvement assumptions.	Yes.
Student response	Share of students who remain in programs, transfer to passing programs, or withdraw or decline to enroll by program performance category and transfer group; separately for GE and non-GE programs.	Assumptions from 2014 RIA and prior work.	Yes.

TABLE 6.1—MAIN ASSUMPTIONS AND SOURCES—Continued

Category	Detail	Source	Included in sensitivity?
Student borrowing	Debt changes if students transfer to passing program by program performance, risk group, and cohort; separately for GE and non-GE programs.	Based on Department data	No.
Additional Assumptions for Calculation of Costs, Benefits, and Transfers			
Earnings gain	Average program earnings by risk group and program performance, separately for GE and non-GE programs.	Based on Department data	Yes.
Tax rates	Federal and State average marginal tax and transfer rates	Hendren and Sprung-Keyser 2020 estimates based on CBO.	No.
Instructional cost	Average institution-level instructional expenditure by risk group and program performance; separately for GE and non-GE programs.	IPEDS	No.

Enrollment Growth Assumptions

For AYs 2023 to 2034, the budget model assumes a constant yearly rate of growth or decline in enrollment of students receiving title IV, HEA program

funds in GE and non-GE programs in absence of the rule.³¹² We compute the average annual rate of change in title IV, HEA enrollment from AY 2016 to AY 2022, separately by the combination of control and credential level. We assume

this rate of growth for each type of program for AYs 2023 to 2034 when constructing our baseline enrollment projections.³¹³ Table 6.2 below reports the assumed average annual percent change in title IV, HEA enrollment.

TABLE 6.2—ANNUAL ENROLLMENT GROWTH RATE (PERCENT) ASSUMPTIONS

	Public	Private, nonprofit	Proprietary
UG Certificates	–2.6	–6.9	4.1
Associate	–3.7	–3.9	–3.7
Bachelor's	–0.5	–0.8	–2.7
Post-BA Certs	4.2	–2.3	–0.4
Master's	3.0	0.5	–1.1
Doctoral	4.9	3.1	–1.7
Professional	0.9	–0.1	–0.4
Grad Certs	1.2	2.0	–0.8

Program Performance Transition Assumptions

The methodology, described in more detail below, models title IV, HEA enrollment over time not for specific programs, but rather by groupings of programs by broad credential level and control, the number of alternative programs available, whether the program is GE or non-GE, and whether the program passes or fails the D/E and EP metrics. The model estimates the flow of students between these groups due to changes in program performance over time and reflects assumptions for the share of enrollment that would transition between the following four performance categories in each year:

- Passing (includes with and without data)
- Failing D/E rate only
- Failing EP rate only
- Failing both D/E and EP rates

A GE program becomes ineligible if it fails either the D/E or EP rate measures in two out of three consecutive years.

We assume that ineligible programs remain that way for all future years and, therefore, do not model performance transitions after ineligibility is reached. The model applies different assumptions for the first year of transition (from year 2025 to 2026) and subsequent years (after 2026). It assumes that the rates of program transition reach a steady state in 2027. We assume modest improvement in performance, indicated by a reduction in the rate of failing and an increase in the rate of passing, among programs that fail one of the metrics, and an increase in the rate of passing again, among GE programs that pass the metrics. All transition probabilities are estimated separately for GE and non-GE programs and for four aggregate groups: proprietary 2-year or less; public or nonprofit 2-year or less; 4-year programs; graduate programs.³¹⁴

The assumptions for the 2025 to 2026 transition are taken directly from an observed comparison of actual rates results for two consecutive cohorts of students. The initial assignment of

performance categories in 2025 is based on the 2022 PPD for students who completed programs in award years 2015 and 2016, whose earnings are measured in calendar years 2018 and 2019. The program transition assumptions for 2025 to 2026 are based on the outcomes for this cohort of students along with the earnings outcomes of students who completed programs in award years 2016 and 2017 (earnings measured in calendar years 2019 and 2020) and debt of students who completed programs in award years 2017 and 2018. A new set of D/E and EP metrics was computed for each program using this additional two-year cohort. Programs with fewer than 30 completers or with fewer than 30 completers with earnings records are determined to be passing, though can transition out of this category between years. The share of enrollment that transitions from each performance

³¹² AYs 2023 to 2034 are transformed to FYs 2023 to 2033 later in the estimation process.

³¹³ The number of programs in proprietary post-BA certificates and proprietary professional degrees

was too low to reliably compute a growth rate. Therefore, we assumed a rate equal to the overall proprietary rate of –0.4 percent.

³¹⁴ The budget simulations separate lower and upper division enrollment in 4-year programs. We assume the same program transition rates for both.

category to another is computed separately for each group.³¹⁵

The left panels of Tables 6.3 and 6.4 report the program transition assumptions from 2025 to 2026 for non-GE and GE programs, respectively. Program performance for non-GE is quite stable, with 95.8 percent of passing enrollment in two-year or less public and nonprofit expected to remain in passing programs. Persistence rates are even higher among 4-year and graduate programs. Among programs that fail the EP threshold, a relatively high share—more than one-third among 2-year and less programs—would be at passing programs in a subsequent year. The performance of GE programs is only slightly less persistent than that of non-GE programs. Note that GE programs would become ineligible for title IV, HEA funds the following year if they fail the same metric two years in a row. Among enrollment in less than two-year proprietary programs that fail the EP metric in 2025, 21.7 percent would pass in 2026 due to a combination of passing with data and no data.

The observed results also serve as the baseline for each subsequent transition of results (2026 to 2027, 2027 to 2028,

etc.). The model applies additional assumptions from this baseline for each transition beginning with 2026 to 2027. Because the baseline assumptions are the actual observed results of programs based on a cohort of students that completed programs prior to the Department's GE rulemaking efforts, these transition assumptions do not account for changes that institutions have made to their programs in response to the Department's regulatory actions or would make after the final regulations are published.

As done with analysis of the 2014 rule, the Department assumes that institutions at risk of warning or sanction would take at least some steps to improve program performance by improving program quality, job placement, and lowering prices (leading to lower levels of debt), beginning with the 2026 to 2027 transition. There is evidence that institutions have responded to past GE measures by aiming to improve outcomes or redirecting enrollment from low-performing programs. Institutions subject to GE regulations have experienced slower enrollment and those that pass GE thresholds tend to

have a lower likelihood of program or institution closure.³¹⁶ Some leaders of institutions subject to GE regulation in 2014 did make improvements, such as lowering costs, increasing job placement and academic support staff, and other changes.³¹⁷ We account for this by increasing the baseline observed probability of having a passing result by five percentage points for programs with at least one failing metric in 2026. Additionally, we improve the baseline observed probability of passing GE programs having a sequential passing result by two and a half percentage points to capture the incentive that currently passing programs have to remain that way. These new rates are shown in the right panels of Tables 6.3 and 6.4.

We assume the same rates of transition between performance categories for subsequent years as we do for the 2026 to 2027 transitions.

Since the budget impact and net costs, benefits, and transfers depend on assumptions about institutional performance after the rule is enacted, we incorporate alternative assumptions about these transitions in our sensitivity analysis.

TABLE 6.3—PROGRAM TRANSITION ASSUMPTIONS NON-GE PROGRAMS

	Percent in year t+1 status (2026)				Percent in year t+1 status (2027–2033)			
	Pass	Fail D/E only	Fail EP only	Fail Both	Pass	Fail D/E only	Fail EP only	Fail Both
Public and Nonprofit 2-year or less								
Year t Status:								
Pass	95.8	0.0	4.1	0.1	95.8	0.0	4.1	0.1
Fail D/E only	10.1	84.3	1.6	4.1	15.1	79.3	1.6	4.1
Fail EP only	37.7	0.1	62.1	0.1	42.7	0.1	57.1	0.1
Fail Both	22.2	6.5	8.6	62.7	27.2	6.5	8.6	57.7
4-year								
Year t Status:								
Pass	99.1	0.3	0.4	0.2	99.1	0.3	0.4	0.2
Fail D/E only	28.8	63.6	0.7	6.9	33.8	58.6	0.7	6.9
Fail EP only	45.5	1.1	48.1	5.3	50.5	1.1	43.1	5.3
Fail Both	24.3	11.3	5.4	59.0	29.3	11.3	5.4	54.0
Graduate								
Year t Status:								
Pass	98.3	1.6	0.0	0.0	98.3	1.6	0.0	0.0
Fail D/E only	29.2	69.3	0.0	1.5	34.2	64.3	0.0	1.5
Fail EP only	72.4	0.0	17.9	9.7	77.4	0.0	12.9	9.7
Fail Both	20.2	44.3	2.7	32.7	25.2	44.3	2.7	27.7

³¹⁵ In order to produce transition rates that are stable over time and that do not include secular trends in passing or failing rates (which are already reflected in our program growth assumptions), we compute transition rates from Year 1 to Year 2 and from Year 2 to Year 1 and average them to generate a stable rate shown in the tables.

³¹⁶ Fountain, J. (2019). The Effect of the Gainful Employment Regulatory Uncertainty on Student Enrollment at For-Profit Institutions of Higher Education. Research in Higher Education, Springer; Association for Institutional Research, vol. 60(8), 1065–1089. Kelchen, R. & Liu, Z. (2022). Did Gainful Employment Regulations Result in College

and Program Closures? *Education Finance and Policy*; 17 (3): 454–478.

³¹⁷ Hentschke, G.C. & Parry, S.C. (2015). Innovation in Times of Regulatory Uncertainty: Responses to the Threat of “Gainful Employment.” *Innov High Educ* 40, 97–109 (doi.org/10.1007/s10755-014-9298-z).

TABLE 6.4—PROGRAM TRANSITION ASSUMPTIONS GE PROGRAMS

	Share in year t+1 status (2026)				Share in year t+1 status (2027–2033)			
	Pass	Fail D/E only	Fail EP only	Fail Both	Pass	Fail D/E only	Fail EP only	Fail Both
Proprietary 2-year or less								
Year t Status:								
Pass	91.1	2.3	5.8	0.9	93.6	1.7	4.2	0.6
Fail D/E only	18.8	66.7	0.2	14.4	23.8	61.7	0.2	14.4
Fail EP only	10.7	0.0	82.1	7.2	15.7	0.0	77.1	7.2
Fail Both	3.4	7.2	15.8	73.6	8.4	7.2	15.8	68.6
Public and Nonprofit 2-year or less								
Year t Status:								
Pass	95.8	0.0	4.1	0.1	98.3	0.0	1.7	0.1
Fail D/E only	60.5	0.0	0.0	39.5	65.5	0.0	0.0	34.5
Fail EP only	47.3	0.0	51.8	0.8	52.3	0.0	46.8	0.8
Fail Both	29.1	29.2	8.9	32.7	34.1	29.2	8.9	27.7
4-year								
Year t Status:								
Pass	94.1	5.4	0.0	0.4	96.6	3.1	0.0	0.2
Fail D/E only	21.4	70.3	0.0	8.3	26.4	65.3	0.0	8.3
Fail EP only	2.4	4.9	0.0	92.7	7.4	4.9	0.0	87.7
Fail Both	5.4	32.2	1.5	60.9	10.4	32.2	1.5	55.9
Graduate								
Year t Status:								
Pass	97.0	2.9	0.0	0.1	99.5	0.5	0.0	0.0
Fail D/E only	19.9	77.7	0.0	2.4	24.9	72.7	0.0	2.4
Fail EP only	100.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0
Fail Both	8.7	37.4	0.0	53.9	13.7	37.4	0.0	48.9

Student Response Assumptions

The Department's model applies assumptions for the probability that a current or potential student would transfer or choose a different program, remain in or choose the same program, or withdraw from or not enroll in any postsecondary program in reaction to a program's performance. The model assumes that student response would be greater when a program becomes ineligible for title IV, HEA aid than when a program has a single year of inadequate performance, which initiates warnings and the acknowledgment requirement for GE programs, an acknowledgment requirement non-GE programs that fail D/E, and publicly reported performance information in the ED portal for both GE and non-GE programs. We also let the rates of transfer and withdrawal or non-enrollment differ with the number of alternative transfer options available to students enrolled (or planning to enroll) in a failing program. Specifically, building on the analysis presented in "Measuring Students' Alternative Options" above, we categorize individual programs into one of four categories:

- *High transfer options:* Have at least one passing program in the same credential level at the same institution

and in a related field (as indicated by being in the same 2-digit CIP code).

- *Medium transfer options:* Have a passing transfer option within the same ZIP3, credential level, and narrow field (4-digit CIP code).

- *Low transfer options:* Have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code.

- *Few transfer options:* Do not have a passing transfer option within the same ZIP3, credential level, and broad (2-digit) CIP code. Students in these programs would be required to enroll in either a distance education program or enroll outside their ZIP3. As shown in "Measuring Students' Alternative Options," all failing programs have at least one non-failing program in the same credential level and 2-digit CIP code in the same State.

For each of the four categories above, we make assumptions for each type of student transition. Programs with passing metrics are assumed to retain all of their students.

Students that transfer are assumed to transfer to passing programs, and for the purposes of the budget simulation this includes programs with an insufficient n-size. We assume that rates of withdrawal (or non-enrollment) and transfer are higher for ineligible programs than those where only the

warning/acknowledgment is required (GE programs with one year of a failing metric and non-GE programs with a failing D/E metric). We also assume that rates of transfer are weakly decreasing (and rates of dropout and remaining in program are both weakly increasing) as programs have fewer transfer options. These assumptions regarding student responses to program results are provided in Tables 6.5 and 6.6. Coupled with the scenarios presented in the "Sensitivity Analysis," these assumptions are intended to provide a reasonable estimation of the range of impact that the regulations could have on the budget and overall social costs, benefits, and transfers.

The assumptions above are based on our best judgment and from extant research that we view as reasonable guides to the share of students likely to transfer to or choose another program when their program loses title IV, HEA eligibility. For instance, a 2021 GAO report found that about half of non-completing students who were at closed institutions transferred.³¹⁸ This magnitude is similar to recent analysis that found that 47 percent of students

³¹⁸ Government Accountability Office (2022). College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges (GAO-22-104403) (<https://www.gao.gov/products/gao-22-104403>).

reenrolled after an institutional closure.³¹⁹ The authors of this report find very little movement from public or nonprofit institutions into for-profit institutions, but considerable movement in the other direction. For example, about half of re-enrollees at closed for-profit 2-year institutions moved to public 2-year institutions, whereas less than 3 percent of re-enrollees at closed public and private nonprofit 4-year institutions moved to for-profit institutions. Other evidence from historical cohort default rate sanctions indicates a transfer rate of about half of students at for-profit colleges that were subject to loss of Federal financial aid disbursement eligibility, with much of that shift to public two-year institutions.³²⁰ The Department also conducted its own internal analysis of ITT Technical Institute closures. About

half of students subject to the closure re-enrolled elsewhere (relative to pre-closure patterns). The majority of students that re-enrolled did so in the same two-digit CIP code. Of associate degree students that re-enrolled, 45 percent transferred to a public institution, 41 percent transferred to a different for-profit institution, and 13 percent transferred to a private nonprofit institution. Most remained in associate or certificate programs. Of bachelor's degree students that re-enrolled, 54 percent transferred to a different for-profit institution, 25 percent shifted to a public institution, and 21 percent transferred to a private nonprofit institution.

Data from the Beginning Postsecondary Students Longitudinal 2012/2017 study provides further information on students' general

patterns through and across postsecondary institutions (not specific to responses to sanctions or closures). Of students that started at a public or private nonprofit 4-year institution, about 3 percent shifted to a for-profit institution within 5 years. Of those that began at a public or private nonprofit 2-year institution, about 8 percent shifted to a for-profit institution within 5 years.

The attestations for non-GE programs are scheduled to begin the year following the attestations for GE programs. Therefore, we delay applying transfer rates to non-GE programs in the first year of our budget analysis. Additionally, since undergraduate associate and bachelor's degree programs will not have an attestation requirement, we decrease the rate of transfer out by one quarter for these programs.

TABLE 6.5—STUDENT RESPONSE ASSUMPTIONS, BY PROGRAM RESULT AND NUMBER OF ALTERNATIVE PROGRAM OPTIONS AVAILABLE

Program result →	Pass			Fail once			Ineligible		
Student Response →	Remain	Transfer	Withdrawal/ non-enroll- ment	Remain	Transfer	Withdrawal/ non-enroll- ment	Remain	Transfer	Withdrawal/ non-enroll- ment
GE:									
High Alternatives	1.00	0.00	0.00	0.40	0.45	0.15	0.20	0.60	0.20
Medium Alternatives	1.00	0.00	0.00	0.45	0.35	0.20	0.20	0.55	0.25
Low Alternatives	1.00	0.00	0.00	0.50	0.30	0.20	0.25	0.45	0.30
Few Alternatives	1.00	0.00	0.00	0.55	0.25	0.20	0.25	0.35	0.40
Non-GE, Attestation:									
High Alternatives	1.00	0.00	0.00	0.80	0.20	0.00	na	na	na
Medium Alternatives	1.00	0.00	0.00	0.85	0.15	0.00	na	na	na
Low Alternatives	1.00	0.00	0.00	0.90	0.10	0.00	na	na	na
Few Alternatives	1.00	0.00	0.00	0.95	0.05	0.00	na	na	na
Non-GE, No Attestation:									
High Alternatives	1.00	0.00	0.00	0.85	0.15	0.00	na	na	na
Medium Alternatives	1.00	0.00	0.00	0.8875	0.1125	0.00	na	na	na
Low Alternatives	1.00	0.00	0.00	0.925	0.075	0.00	na	na	na
Few Alternatives	1.00	0.00	0.00	0.9625	0.0375	0.00	na	na	na

In Table 6.6, we provide detail of the assumptions of the destinations among students who transfer, separately for the following groups:³²¹

- Risk 1 (Proprietary <=2 year)
- Risk 2 (Public, Nonprofit <=2 year)
- Risk 3 (Lower division 4 year)
- Risk 4 (Upper division 4 year)
- Risk 5 (Graduate)

TABLE 6.6—STUDENT RESPONSE ASSUMPTIONS, AMONG TRANSFERRING STUDENTS, SHARE SHIFTING SECTORS

Shift from . . .	Shift to GE programs					Shift to non-GE programs			
	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5	Risk 2	Risk 3	Risk 4	Risk 5
GE:									
Risk 1	0.50	0.30	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 2	0.30	0.50	0.10	0.00	0.00	0.10	0.00	0.00	0.00
Risk 3	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00	0.00
Risk 4	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20	0.00
Risk 5	0.00	0.00	0.00	0.00	0.80	0.00	0.00	0.00	0.20
Non-GE:									
Risk 2	0.05	0.05	0.00	0.00	0.00	0.70	0.20	0.00	0.00
Risk 3	0.00	0.00	0.05	0.00	0.00	0.05	0.90	0.00	0.00
Risk 4	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95	0.00

³¹⁹ State Higher Ed. Executive Officers Ass'n (2022). More than 100,000 Students Experienced an Abrupt Campus Closure Between July 2004 and June 2020 (sheeo.org/more-than-100000-students-experienced-an-abrupt-campus-closure-between-july-2004-and-june-2020/).

³²⁰ Cellini, S.R., Darolia, R. & Turner, L.J. (2020). Where Do Students Go When For-Profit Colleges Lose Federal Aid? *American Economic Journal: Economic Policy*, 12(2), 46–83.

³²¹ Lower division includes students in their first two years of undergraduate education. Upper division includes students in their third year or higher.

TABLE 6.6—STUDENT RESPONSE ASSUMPTIONS, AMONG TRANSFERRING STUDENTS, SHARE SHIFTING SECTORS—Continued

Shift from . . .	Shift to GE programs					Shift to non-GE programs			
	Risk 1	Risk 2	Risk 3	Risk 4	Risk 5	Risk 2	Risk 3	Risk 4	Risk 5
Risk 5	0.00	0.00	0.00	0.00	0.05	0.00	0.00	0.00	0.95

As we describe below, the assumptions for student responses are applied to the estimated enrollment in each aggregate group after factoring in enrollment growth.

Student Borrowing Assumptions

Analyses in the Regulatory Impact Analysis of the 2014 Prior Rule assumed that student debt was unchanged if students transferred from failing to passing programs, but we believe this assumption to be too conservative given that one goal of the GE rule is to reduce the debt burden of students. Recall that Tables 4.29 and 4.30 above reported the percent difference in mean debt between failing GE and non-GE programs and their transfer options, by credential level and 2-digit CIP code. Across all subjects and credential levels, debt is 22 percent lower at alternative programs than at failing GE programs. At non-GE programs, there is no aggregate debt difference between failing programs and their alternatives, though this masks heterogeneity across credential levels. For graduate degree programs, movement to alternative programs from failing programs is associated with lower debt levels while movement from failing to passing Associate programs is associated with an increase in debt. Students that drop out of (or decline to enroll in) failing programs are assumed to acquire no educational debt.

To incorporate changes in average loan volume associated with student transitions, we compute average subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment separately for GE and non-GE programs by risk group and program performance group. These averages are then applied to shifts in enrollment to generate changes in the amount of aid.

Methodology for Net Budget Impact

The budget model estimates a yearly enrollment for AYs 2023 to 2034 and the distribution of those enrollments in programs characterized by D/E and EP performance, risk group, transfer category, and whether it is a GE program. This enrollment is projected for a baseline (in absence of the rule) and under the final rule. The net budget impact for each year is calculated by applying assumptions regarding the

average amount of title IV, HEA program funds received by this distribution of enrollments across groups of programs. The difference in these two scenarios provides the Department's estimate of the impact of the final rule. We do not simulate the impact on the rule at the individual program level because doing so would necessitate very specific assumptions about which programs' students transfer to in response to the regulations. While we made such assumptions in the "Measuring Students' Alternatives" section above, we do not think it is analytically tractable to do for all years. Therefore, for the purposes of budget modeling, we perform analysis with aggregations of programs into groups defined by the following:³²²

- Five student loan model risk groups: (1) 2-year (and below) for-profit; (2) 2-year (and below) public or nonprofit; (3) 4-year (any control) lower division, which is students in their first two years of a bachelor's program; (4) 4-year (any control) upper division, which is students beyond their first two years of a bachelor's program; (5) Graduate student (any control).

- Four transfer categories (high, medium, low, few alternatives) by which the student transfer rates are assumed to differ. This is a program-level characteristic that is assumed not to change.

- Two GE program categories (GE and eligible non-GE) by which the program transitions are assumed to differ.

- Six performance categories: Pass, Fail D/E, Fail EP, Fail Both, Pre-ineligible (a program's current enrollment is Title IV, HEA eligible, but next year's enrollment would not be), Ineligible (current enrollment is not Title IV, HEA eligible).

We refer to groups defined by these characteristics as "program aggregate" groups.

We first generate a projected baseline (in absence of the final rule) enrollment, Pell grant volume, and loan volume for each of the program aggregate groups from AYs 2023 to 2034. This baseline

³²² Note that non-GE programs do not include risk group 1 (2-year and below for-profit institutions) or the pre-ineligible or ineligible performance categories. Some groups also do not have all four transfer group categories. There are 184 total groups used in the analysis.

projection includes several steps. First, we compute average annual growth rate for each control by credential level from 2016 to 2022. These growth rates are presented in Table 6.2. We then apply these annual growth rates to the actual enrollment by program in 2022 to forecast enrollment in each program in 2023. This step is repeated for each year to get projected enrollment by program through 2034. We then compute average Pell, subsidized and unsubsidized direct loan, Grad PLUS, and Parent PLUS per enrollment by risk group, program performance group, and GE vs. non-GE for 2022. These averages are then adjusted according to the PB2024 loan volume and Pell grant baseline assumptions for the change in average loan by loan type and the change in average Pell grant. We then multiply the projected enrollment for each program by these average aid amounts to get projected total aid volume by program through 2034. Finally, we sum the enrollment and aid amounts across programs for each year to get enrollment and aid volume by program aggregate group, AYs 2023 to 2034, and shift the baseline Pell and loan volume from AYs 2023 to 2034 to FYs 2023 to 2033 for calculating budget cost estimates.

The most significant task is to generate projected enrollment, Pell volume, and loan volume for each of the program aggregate groups from 2023 to 2033 with the rule in place. We assume the first set of rates would be released in 2025 award year, so this is starting year for our projections. Projecting counterfactual enrollment and aid volumes involves several steps:

Step 1: Start with the enrollment by program aggregate group in 2025. In this first year there are no programs that are ineligible for Title IV, HEA funding.

Step 2: Apply the student transition assumptions to the enrollment by program aggregate group. This generates estimates of the enrollment that is expected to remain enrolled in the program aggregate group, the enrollment that is expected to drop out of postsecondary enrollment, and the enrollment that is expected to transfer to a different program aggregate group.

Step 3: Compute new estimated enrollment for the start of 2026 (before the second program performance is revealed) for each cell by adding the

remaining enrollment to the enrollment that is expected to transfer into that group. We assume that (1) students transfer from failing or ineligible programs to passing programs in the same transfer group and GE program group; (2) Students in risk groups 3 (lower division 4-year), 4 (upper division 4-year college) or 5 (graduate) stay in those risk groups; (3) Students in risk group 1 can shift to risk groups 2 or 3; (4) Students in risk group 2 can shift to risk groups 1 or 3. Therefore, we permit enrollment to shift between proprietary and public or nonprofit certificate programs and from certificate and associate programs to lower—division bachelor's programs. We also allow enrollment to shift between GE and non-GE program, based on the assumptions listed in Table 6.6.

Step 4: Determine the change in aggregate baseline enrollment between 2025 and 2026 for each risk group and allocate these additional enrollments to each program aggregate group in proportion to the group enrollment computed in Step 3.

Step 5: Apply the program transition assumptions to the aggregate group enrollment from Step 4. This results in estimates of the enrollment that would stay within or shift from each performance category to another performance category in the next year. This mapping would differ for GE and non-GE programs and by risk group, as reported in Tables 6.3 and 6.4 above. For non-GE programs, every performance category can shift enrollment to every performance category. For GE programs, however, enrollment in each failure category would not remain in the same category because if a metric is failed twice, this enrollment would move to pre-ineligibility. The possible program transitions for GE programs are:

- Pass → Pass, Fail D/E, Fail EP, Fail Both
- Fail D/E → Pass, Fail EP, Pre-Ineligible
- Fail EP → Pass, Fail D/E, Pre-Ineligible
- Fail Both → Pass, Pre-Ineligible

Step 6: Compute new estimated enrollment at end of 2026 (after program performance is revealed) for each program aggregate group by adding the number that stay in the same performance category plus the number that shift from other performance categories.

Step 7: Repeat steps 1 to 6 above using the end of 2026 enrollment by group as the starting point for 2027 and repeat through 2034. The only addition is that in Step 5, two more program

transitions are possible for GE programs: Pre-Ineligible moves to Ineligible and Ineligible remains Ineligible.

Step 8: Generate projected Pell grant and loan volume by program aggregate group from AYs 2023 to 2034 under the rule. We multiply the projected enrollment by group by average aid amounts (Pell and loan volume) to get projected total aid amounts by group through 2034. Any enrollment that has dropped out (not enrolled in postsecondary) or in the ineligible category get zero Pell and loan amounts. Note that the average aid amounts by cell come from the PB projections, so are allowed to vary over time.

Step 9: Shift Pell grant and loan volume under the rule from AYs 2025 to 2034 to FYs 2025 to 2033 for calculating budget cost estimates.

A net savings for the title IV, HEA programs comes through four mechanisms. The primary source is from students who drop out of postsecondary education in the year after their program receives a failing D/E or EP rate or becomes ineligible. The second is for the smaller number of students who remain enrolled at a program that becomes ineligible for title IV, HEA program funds. Third, we assume a budget impact on the title IV, HEA programs from students who transfer from programs that are failing to better-performing programs because the typical aid levels differ between programs according to risk group and program performance. For instance, subsidized Direct Loan borrowing is 24 percent less (\$2044 vs. \$1547) for students at GE programs failing the D/E metric in risk group 1 than in passing programs in the same risk group in 2026.

Finally, consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the title IV, HEA programs also reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. To determine the estimated budget impact from reduced loan volume, the difference in yearly loan volumes between the baseline and policy scenarios were calculated as a percent of baseline scenario volumes. This generated an adjustment factor that was applied to loan volumes in the Student Loan Model (SLM) for each cohort, loan type, and risk group combination in the President's Budget for FY2024 (PB2024). The reduced loan volumes are also expected to result in some decrease in future consolidations which is also captured in the model run. Since the implied subsidy rate for each loan type differs by risk group, enrollment shifts

to risk groups with greater expected repayment would generate a net budget savings. Since our analysis does not incorporate differences in subsidy rates between programs in the same risk group, such as between programs passing and failing the D/E or EP metrics, these estimates potentially understate the increase in expected repayment resulting from the regulations.

Methodology for Costs, Benefits, and Transfers

The estimated enrollment in each aggregate program group is used to quantify the costs, benefits, and transfers resulting from the regulations for each year from 2023 to 2033. As described in the Discussion of Costs, Benefits, and Transfers, we quantify an earnings gain for students from attending higher financial value programs and the additional tax revenue that comes from that additional earnings. We quantify the cost associated with additional instructional expenses to educate students who shift to different types of programs and the transfer of instructional expenses as students shift programs. We also estimate the transfer of title IV, HEA program funds from programs that lose students to programs that gain students.

Earnings Gain Benefit

A major goal of greater transparency and accountability is to shift students towards higher financial value programs—those with greater earnings potential, lower debt, or both. To quantify the earnings gain associated with the final rule, we estimate the aggregate annual earnings of would-be program graduates under the baseline and policy scenarios and take the difference. For each risk group and program performance group, we compute the enrollment-weighted average of median program earnings. Average earnings for programs that have become ineligible is assumed to be the average of median earnings for programs in the three failing categories, weighted by the enrollment share in these categories. This captures, for instance, that the earnings of 2-year programs that become ineligible are quite lower than those that enroll graduate students. Since we have simulated enrollment, but not completion, annual program enrollment is converted into annual program completions by applying a ratio that differs for 2-year programs or less, bachelor's degree programs, or graduate

programs.³²³ Earnings for students that do not complete are not available and not included in our calculations. Students that drop out of failing programs (or decline to enroll altogether) are assumed to receive

earnings equal to the median earnings of high school graduates in the State (the same measure used for the Earnings Threshold). Therefore, earnings could increase for this group if students reduce enrollment in programs leading

to earnings less than a high school graduate. We estimate aggregate earnings by program group by multiplying enrollment by average earnings, reported in Table 6.7, and the completion ratio.

TABLE 6.7—AVERAGE PROGRAM EARNINGS BY GROUP
[\$2019]

	Pass	Fall D/E	Fail EP only	Fail both	Ineligible
GE Programs					
Proprietary 2yr or less	39,233	28,672	20,414	18,531	21,308
Public/Nonprofit (NP) 2yr or less	37,274	30,234	20,188	20,630	20,254
Bachelor Lower	51,663	31,102	24,048	23,227	30,513
Bachelor Upper	51,663	31,102	24,048	23,227	30,513
Graduate	67,615	46,433	15,891	19,972	44,890
Non-GE Programs					
Public/NP 2yr or less	36,492	29,522	23,642	19,388	N/A
Bachelor Lower	47,839	29,158	21,508	21,925	N/A
Bachelor Upper	47,839	29,158	21,508	21,925	N/A
Graduate	76,619	58,444	19,765	22,747	N/A

Students experience earnings gain each year they work following program completion. We compute the earnings benefit over the analysis window by giving 2026 completers 7 years of earnings gains, 2027 completers 6 years of earnings gains, and so on. The earnings gain of students that graduate during 2033 are only measured for one year. In reality program graduates would experience an earnings gain annually over their entire working career; our estimates likely understate the total likely earnings benefit of the policy.

However, our approach can overstate the earnings gain of students that shift programs if students experience a smaller earnings gain than the average difference between passing and failing programs within each GE-by-risk group in Table 6.7. To account for this, we apply an additional adjustment factor to the aggregate earnings difference to quantify how much of the earnings difference is accounted for by programs.

There is no consensus in the research literature on the magnitude of this parameter, with some studies finding very large impacts of specific programs or institutions on earnings³²⁴ and others

finding smaller impacts.³²⁵ Unfortunately, many of these studies are set in specific contexts (*e.g.* only public four-year universities in one State) and most look at institutions overall rather than programs, which may not extrapolate to our setting given the large outcome variation across programs in the same institution.

To select the value used for this adjustment factor, we compared the average earnings difference between passing and failing programs (conditional on credential level) before versus after controlling for the rich demographic characteristics described in “Student Demographic Analysis” (specifically, the share of students in each race/ethnic category, the share of students that are male, independent, first-generation, and a Pell grant recipient, and the average family income of students).³²⁶ Based on this analysis, our primary estimates adjust the raw earnings difference in Table 6.7 down using an adjustment factor of 75 percent. Given the uncertainty around the proper adjustment factor to use, we include a range of values in the sensitivity analysis.

In the analysis of alternative options above, we showed the expected change in earnings for students that transfer from failing programs for each credential-level by 2-digit CIP code. Across all credential levels, students that shift from failing GE programs were expected to increase annual earnings by about 43 percent and those transferring from failing non-GE programs were expected to increase annual earnings by about 21 percent. These estimates are in line with those from Table 6.7 and used in the benefit impact.

Fiscal Externality Benefit

The increased earnings of program graduates would generate additional Federal and State tax revenue and reductions in transfer program expenditure. To the earnings gain, we multiply an average marginal tax and transfer rate of 18.6 percent to estimate the fiscal benefit. This rate was computed in Hendren and Sprung-Keyser (2020) specifically to estimate the fiscal externality of earnings gains stemming from improvement in college quality, so it is appropriate for use in our setting.³²⁷ The rate is derived from

³²³ The ratios used are 11.5% for programs of 2-year or less, 16.5% for bachelor's programs, and 27.3% for graduate programs. These are the ratio between number of title IV, HEA completers in the two-year earnings cohort and the average title IV, HEA enrollment in the 2016 and 2017 Award Years.

³²⁴ Hoekstra, Mark (2009). The Effect of Attending the Flagship State University on Earnings: A Discontinuity-Based Approach. *Review of Economics and Statistics*, 91 (4): 717–724. Hoxby, C.M. (2019). The Productivity of US Postsecondary Institutions. In *Productivity in Higher Education*, Hoxby, C.M. & K.M. Stange, K.M. (eds.). University

of Chicago Press: Chicago. Andrews, R.J. & Stange, K.M. (2019). Price Regulation, Price Discrimination, and Equality of Opportunity in Higher Education: Evidence from Texas. *American Economic Journal: Economic Policy*, 11.4, 31–65. Andrews, Rodney, Imberman, Scott, Lovenheim, Michael & Stange, Kevin (Aug. 2022). The Returns to College Major Choice: Average and Distributional Effects, Career Trajectories, and Earnings Variability. NBER Working Paper 30331.

³²⁵ Mountjoy, Jack & Hickman, Brent (Sept. 2021). The Returns to College(s): Relative Value-Added

and Match Effects in Higher Education. NBER Working Paper 29276.

³²⁶ Note that both the “raw” and fully controlled regressions include indicators for credential level, as enrollment is not permitted to move across credential levels in our budget simulations other than modest shift from 2-year programs to lower-division four-year programs.

³²⁷ Hendren, Nathaniel & Sprung-Keyser, Ben (2020). A Unified Welfare Analysis of Government Policies. *Quarterly Journal of Economics* 135 (3): 1209–1318.

2016 CBO estimates and includes Federal and State income taxes and transfers from the Supplemental Nutrition Assistance Program (SNAP) but excludes payroll taxes, housing vouchers, and other safety-net programs. Note that this benefit is not included in our budget impact estimates.

Instructional Spending Cost and Transfer

To determine the additional cost of educating students that shift from one

type of program to another or the cost savings from students who chose not to enroll, we estimate the aggregate annual instructional spending under the baseline and policy scenarios and take the difference. We used the instructional expense per FTE enrollee data from IPEDS to calculate the enrollment-weighted average institutional-level instructional expense per FTE student for programs by risk group and performance result,

separately for GE programs and non-GE programs. Average spending for programs that have become ineligible is assumed to be the average of the three failing categories, weighted by the enrollment share in these categories. These estimates are reported in Table 6.8. We estimate aggregate spending by program group by multiplying enrollment from 2023 through 2033 by average spending.

TABLE 6.8—AVERAGE INSTRUCTIONAL COST PER FTE BY GROUP

	Pass	Fall D/E	Fail EP only	Fail both	Ineligible
GE Programs:					
Proprietary 2yr or less	4,341	3,007	4,442	3,990	4,106
Public/NP 2yr or less	7,325	5,859	4,984	3,688	4,873
Bachelor Lower	3,668	2,655	3,047	3,644	2,728
Bachelor Upper	3,668	2,655	3,047	3,644	2,728
Graduate	5,294	3,837	1,837	5,151	3,910
Non-GE Programs:					
Public/NP 2yr or less	6,408	5,187	5,959	4,361	N/A
Bachelor Lower	11,263	7,563	9,036	12,021	N/A
Bachelor Upper	11,263	7,563	9,036	12,021	N/A
Graduate	15,666	16,434	7,528	24,355	N/A

Note that since we are using institution-level rather than program-level spending, this will not fully capture spending differences between undergraduate and graduate enrollment, between upper and lower division, and across field of study.³²⁸

To calculate the transfer of instructional expenses from failing to passing programs, we multiply the average instructional expense per enrollee shown in Table 6.7 by the estimated number of annual student transfers for 2023 to 2033 from each risk group and failing category.

Student Aid Transfers

To calculate the amounts of student aid that could transfer with students each year, we multiply the estimated number of students receiving title IV, HEA program funds transferring from ineligible or failing GE and non-GE programs to passing programs in each risk category each year by the average Pell grant, Stafford subsidized loan, unsubsidized loan, PLUS loan, and

GRAD PLUS loan per enrollment in the same categories.

To annualize the amount of benefits, costs, and title IV, HEA program fund transfers from 2023 to 2033, we calculate the net present value (NPV) of the yearly amounts using a discount rate of 3 percent and a discount rate of 7 percent and annualize it over 10 years.

7. Net Budget Impacts

These final regulations are estimated to have a net Federal budget impact of \$ – 13.8 billion, consisting of \$ – 7.4 billion in reduced Pell grants and \$ – 6.4 billion for loan cohorts 2024 to 2033.³²⁹ A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The baseline for estimating the cost of these final regulations is the President's Budget for 2024 (PB2024) as modified for the finalization of the SAVE plan included in the final rule published July 10, 2023.³³⁰ This estimated net budget impact addresses the GE and Financial Transparency provisions, as described below. The provisions related to

Financial Responsibility, Administrative Capability, Certification Procedures, and Ability to Benefit that were included in the NPRM published on May 19, 2023, will be addressed in a forthcoming separate document.

Gainful Employment and Financial Transparency

The final regulations are estimated to shift enrollment towards programs with lower debt-to-earnings or higher median earnings or both, and away from programs that fail either of the two performance metrics. The vast majority of students are assumed to resume their education at the same or another program in the event they are warned about poor program performance or if their program loses eligibility. The final regulations are also estimated to reduce overall enrollment, as some students decide to not enroll. Table 7.1 summarize the main enrollment results for non-GE programs. Enrollment in non-GE programs is expected to increase by about 0.6 percent relative to baseline over the budget period. There is a modest enrollment shift towards programs that pass both metrics, with a particularly large (proportionate) reduction in the share of enrollment in programs that fail D/E. By the end of the analysis window, 96.0 percent of enrollment is expected to be in passing programs.

³²⁸ This may cause our estimates to slightly understate the instructional cost impact since failing programs are disproportionately in lower-earning fields and lower credential levels, which tend to have lower instructional costs. Though we anticipate most movement will be within field and credential level, which would mute this effect. See Hemelt, Steven W., Stange, Kevin M., Furquim, Fernando, Simon, Andrew & Sawyer, John E. (2021). Why Is Math Cheaper than English? Understanding Cost Differences in Higher Education. *Journal of Labor Economics*, vol. 39(2), pages 397–435.

³²⁹ Since the policy is not estimated to shift enrollment until AY 2026 (which includes part of FY 2025), we present enrollment and budget impacts starting in 2025. Impacts in both AY and FY 2024 are zero.

³³⁰ 88 FR 43820 (July 10, 2023).

TABLE 7.1—PRIMARY ENROLLMENT ESTIMATE
[Non-GE programs]

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)									
Baseline	14.12	13.97	13.84	13.71	13.59	13.47	13.36	13.26	13.17
Policy	14.12	14.01	13.89	13.78	13.66	13.54	13.43	13.33	13.22
Percent of Enrollment by Program Performance									
Pass:									
Baseline	95.9	96.0	96.0	96.1	96.1	96.1	96.2	96.2	96.2
Policy	95.9	95.7	96.1	96.3	96.5	96.5	96.6	96.6	96.7
Fail D/E:									
Baseline	1.5	1.5	1.5	1.5	1.6	1.6	1.6	1.6	1.6
Policy	1.5	1.6	1.4	1.3	1.3	1.2	1.2	1.3	1.3
Fail EP:									
Baseline	2.0	2.0	1.9	1.9	1.9	1.8	1.8	1.7	1.7
Policy	2.0	2.2	2.1	2.0	1.9	1.9	1.8	1.8	1.7
Fail Both:									
Baseline	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Policy	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3

Table 7.2 reports comparable estimates for GE programs. Note that for GE programs we estimate enrollment in two additional categories: Pre-Ineligible, *i.e.*, programs that would be ineligible for title IV, HEA aid the following year; and Ineligible. Enrollment in GE

programs is projected to decline by 9 percent relative to baseline, with the largest marginal decline in the first-year programs become ineligible. There is a large enrollment shift towards programs that pass both metrics, with a particularly large reduction in the share

of enrollment in programs that fail EP. By the end of the analysis window, 95.0 percent of enrollment is expected to be in passing programs, compared to 71.8 percent in the baseline scenario.

TABLE 7.2—PRIMARY ENROLLMENT ESTIMATE
[GE programs]

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Total Aggregate Enrollment (millions)									
Baseline	2.63	2.61	2.60	2.60	2.59	2.59	2.59	2.59	2.60
Policy	2.63	2.47	2.43	2.43	2.42	2.41	2.39	2.37	2.34
Percent of Enrollment by Program Performance									
Pass:									
Baseline	76.2	75.7	75.3	74.8	74.3	73.8	73.3	72.8	72.3
Policy	76.2	85.1	91.5	93.5	94.3	94.6	94.8	94.8	94.9
Fail D/E:									
Baseline	6.5	6.4	6.3	6.2	6.0	5.9	5.8	5.6	5.5
Policy	6.5	2.7	1.5	1.6	1.6	1.6	1.6	1.6	1.6
Fail EP:									
Baseline	13.9	14.4	14.9	15.5	16.0	16.6	17.2	17.8	18.4
Policy	13.9	1.9	1.2	1.3	1.3	1.4	1.4	1.4	1.4
Fail Both:									
Baseline	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.
Policy	0.5	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Pre-Inelig:									
Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Policy	0.0	9.9	3.3	1.6	1.3	1.3	1.3	1.3	1.3
Inelig:									
Baseline	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Policy	0.0	2.2	1.8	1.2	0.9	0.7	0.7	0.6	0.0

For non-GE programs, these shifts occur primarily across programs that have different performance in the same loan risk category, with a very modest shift from public and nonprofit two-year and less programs to lower-division 4-

year programs. This is shown in Table 7.3. Shifts away from the public and nonprofit two-year sector within non-GE programs is partially offset from shifts into these programs from failing GE programs. Recall that in “Transfer

Causes Net Enrollment Increase in Some Sectors” above we showed that the vast majority of community colleges would gain enrollment from the regulations.

TABLE 7.3—PRIMARY ENROLLMENT ESTIMATES BY RISK GROUP
[Non-GE programs]

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Projected Total Enrollment by Loan Risk Category (Millions)									
Public/NP 2-year & below:									
Baseline	3.02	2.91	2.80	2.70	2.61	2.51	2.42	2.34	2.25
Policy	3.02	2.92	2.82	2.72	2.62	2.53	2.44	2.35	2.26
4-year (lower):									
Baseline	6.10	6.03	5.96	5.90	5.83	5.77	5.71	5.65	5.59
Policy	6.10	6.04	5.99	5.93	5.87	5.82	5.76	5.70	5.64
4-year (upper):									
Baseline	2.57	2.55	2.54	2.52	2.50	2.49	2.47	2.45	2.44
Policy	2.57	2.55	2.54	2.53	2.51	2.49	2.48	2.46	2.45
Graduate:									
Baseline	2.43	2.48	2.53	2.59	2.64	2.70	2.76	2.82	2.88
Policy	2.43	2.49	2.54	2.59	2.65	2.70	2.76	2.82	2.87
Percent of Enrollment by Loan Risk Category									
Public/NP 2-year & below:									
Baseline	21.38	20.82	20.27	19.73	19.19	18.66	18.14	17.62	17.11
Policy	21.38	20.87	20.32	19.77	19.22	18.67	18.13	17.61	17.09
4-year (lower):									
Baseline	43.19	43.14	43.09	43.02	42.94	42.84	42.73	42.62	42.48
Policy	43.19	43.13	43.10	43.06	43.01	42.95	42.87	42.77	42.66
4-year (upper):									
Baseline	18.20	18.26	18.33	18.38	18.42	18.45	18.48	18.50	18.51
Policy	18.20	18.24	18.29	18.33	18.38	18.42	18.46	18.49	18.51
Graduate:									
Baseline	17.23	17.77	18.32	18.88	19.46	20.05	20.65	21.26	21.89
Policy	17.23	17.61	17.50	17.64	17.73	17.76	17.76	17.75	17.72

Table 7.4—reports a similar breakdown for GE programs. Shifts to passing programs are accompanied by a shift away from proprietary two-year and below programs and towards public and nonprofit programs of similar length, along with a more modest shift towards lower-division 4-year programs.

TABLE 7.4—PRIMARY ENROLLMENT ESTIMATES BY RISK GROUP
[GE programs]

	2025	2026	2027	2028	2029	2030	2031	2032	2033
Projected Total Enrollment by Loan Risk Category (Millions)									
Prop. 2-year & below:									
Baseline	0.72	0.75	0.77	0.80	0.83	0.86	0.89	0.92	0.95
Policy	0.72	0.62	0.59	0.59	0.60	0.60	0.61	0.61	0.61
Public/NP 2-year & below:									
Baseline	0.53	0.52	0.51	0.49	0.48	0.46	0.45	0.44	0.43
Policy	0.53	0.55	0.56	0.57	0.57	0.56	0.56	0.55	0.55
4-year (lower):									
Baseline	0.78	0.77	0.75	0.74	0.73	0.71	0.70	0.69	0.68
Policy	0.78	0.74	0.73	0.72	0.72	0.70	0.69	0.68	0.67
4-year (upper):									
Baseline	0.20	0.20	0.19	0.19	0.18	0.18	0.17	0.17	0.17
Policy	0.20	0.19	0.18	0.18	0.17	0.17	0.16	0.16	0.15
Graduate:									
Baseline	0.38	0.38	0.38	0.38	0.38	0.37	0.37	0.37	0.37
Policy	0.38	0.37	0.37	0.37	0.37	0.37	0.36	0.36	0.36
Percent of Enrollment by Loan Risk Category									
Prop. 2-year & below:									
Baseline	27.52	28.58	29.65	30.77	31.91	33.05	34.22	35.41	36.63
Policy	27.52	25.12	24.33	24.40	24.69	25.03	25.40	25.77	26.14
Public/NP 2-year & below:									
Baseline	20.36	19.88	19.44	18.94	18.44	17.96	17.47	16.97	16.44
Policy	20.36	22.18	23.06	23.36	23.45	23.46	23.44	23.40	23.35
4-year (lower):									
Baseline	29.76	29.33	28.90	28.48	28.05	27.62	27.18	26.76	26.33
Policy	29.76	29.99	29.98	29.79	29.54	29.28	29.01	28.74	28.47
4-year (upper):									
Baseline	7.79	7.62	7.44	7.27	7.09	6.91	6.73	6.55	6.37
Policy	7.79	7.73	7.55	7.36	7.18	7.01	6.86	6.71	6.56
Graduate:									
Baseline	14.58	14.59	14.57	14.55	14.51	14.46	14.39	14.32	14.23
Policy	14.58	14.99	15.08	15.09	15.14	15.21	15.30	15.39	15.48

As reported in Tables 7.5 and 7.6, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033.

TABLE 7.5—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE
[millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	25	57	89	101	108	116	118	116	110	840
Subs.	9	16	11	8	8	10	10	9	9	92
Unsub.	18	10	(45)	(90)	(120)	(143)	(164)	(185)	(209)	(928)
Grad PLUS	4	(25)	(91)	(147)	(183)	(205)	(221)	(235)	(248)	(1,353)
Par. PLUS	7	30	52	61	65	68	67	66	64	480
GE Programs:										
Pell	(199)	(511)	(808)	(936)	(983)	(1,050)	(1,138)	(1,247)	(1,376)	(8,248)
Subs.	(149)	(380)	(472)	(486)	(501)	(529)	(565)	(606)	(653)	(4,340)
Unsub.	(226)	(576)	(707)	(717)	(732)	(765)	(809)	(861)	(921)	(6,313)
Grad PLUS	(20)	(51)	(63)	(62)	(60)	(58)	(56)	(55)	(55)	(479)
Par. PLUS	(18)	(48)	(59)	(59)	(64)	(74)	(86)	(101)	(117)	(625)
Total:										
Pell	(174)	(455)	(719)	(835)	(875)	(934)	(1,020)	(1,131)	(1,266)	(7,409)
Subs.	(139)	(364)	(461)	(477)	(493)	(519)	(555)	(597)	(644)	(4,248)
Unsub.	(208)	(566)	(752)	(807)	(852)	(908)	(973)	(1,046)	(1,130)	(7,241)
Grad PLUS	(16)	(77)	(154)	(209)	(242)	(263)	(278)	(290)	(303)	(1,832)
Par. PLUS	(11)	(18)	(7)	2	1	(6)	(19)	(35)	(53)	(145)

TABLE 7.6—ESTIMATED ANNUAL PERCENT CHANGE IN TITLE IV, HEA AID VOLUME BY FISCAL YEAR
(%)

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	0.25	0.32	0.35	0.37	0.39	0.40	0.37	0.36	0.33	0.35
Subs.	0.09	0.15	0.11	0.08	0.08	0.10	0.10	0.09	0.09	0.10
Unsub.	0.08	0.04	-0.20	-0.40	-0.53	-0.63	-0.72	-0.81	-0.90	-0.46
Grad PLUS	0.07	-0.47	-1.62	-2.48	-2.95	-3.24	-3.42	-3.56	-3.68	-2.48
Par. PLUS	0.08	0.33	0.56	0.66	0.70	0.73	0.73	0.73	0.72	0.58
GE Programs:										
Pell	-9.46	-14.53	-14.66	-14.58	-15.06	-15.91	-16.97	-18.18	-19.54	-15.44
Subs.	-5.36	-13.71	-17.00	-17.43	-17.91	-18.81	-19.97	-21.30	-22.76	-17.18
Unsub.	-4.49	-11.47	-14.12	-14.32	-14.56	-15.16	-15.98	-16.95	-18.04	-13.91
Grad PLUS	-2.83	-7.12	-8.59	-8.27	-7.84	-7.57	-7.40	-7.30	-7.25	-7.16
Par. PLUS	-2.54	-6.62	-7.90	-7.67	-8.16	-9.26	-10.70	-12.35	-14.14	-8.97
Total:										
Pell	-1.46	-2.32	-2.36	-2.37	-2.48	-2.68	-2.95	-3.24	-3.61	-2.59
Subs.	-1.03	-2.71	-3.46	-3.61	-3.75	-3.97	-4.28	-4.63	-5.03	-3.59
Unsub.	-0.77	-2.08	-2.76	-2.95	-3.09	-3.27	-3.48	-3.72	-3.99	-2.91
Grad PLUS	-0.28	-1.25	-2.42	-3.12	-3.49	-3.70	-3.84	-3.94	-4.04	-2.99
Par. PLUS	-0.11	-0.18	-0.07	0.02	0.01	-0.06	-0.19	-0.35	-0.53	-0.16

Table 7.7 reports the annual net budget impact after accounting for estimated loan repayment. We estimate

a net Federal budget impact of \$-13.8 billion, consisting of \$-7.4 billion in

reduced Pell grants and \$-6.4 billion for loan cohorts 2024 to 2033.

TABLE 7.7—ESTIMATED ANNUAL NET BUDGET IMPACT
[Outlays in millions]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Pell	-174	-455	-719	-835	-875	-934	-1,020	-1,131	-1,266	-7,409
Subs.	-39	-114	-153	-158	-158	-160	-166	-172	-181	-1,302
Unsub.	-48	-149	-218	-237	-246	-255	-268	-281	-300	-2,003
PLUS (Par & Grad)	-2	-22	-53	-79	-90	-98	-102	-104	-106	-656
Consol	-12	-36	-80	-145	-229	-323	-431	-537	-641	-2,435
Total	-275	-776	-1,223	-1,454	-1,598	-1,770	-1,987	-2,225	-2,494	-13,805

The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. As noted in the NPRM published June, realized budget impacts will be heavily influenced by actual program performance, student response to

program performance, student borrowing and repayment behavior, and changes in enrollment because of the regulations. For example, if students, including prospective students, react more strongly to the warnings, acknowledgment requirement, or potential ineligibility of programs than

anticipated and, if many of these students leave postsecondary education, the impact on Pell grants and loans could increase. Similarly, if institutions react to the regulations by improving performance, the assumed enrollment and aid amounts could be overstated, though this would be very beneficial to

students. Finally, if students' repayment behavior is different than that assumed in the model, the realized budget impact could be larger or smaller than our estimate.

8. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the benefits, costs, and transfers associated with the provisions of these regulations.

Primary Estimates

We estimate that by shifting enrollment to higher financial-value programs, the regulations would increase student's earnings, resulting in net after-tax gains to students and benefits for taxpayers in the form of additional tax revenue. Table 8.1 reports the estimated aggregate earnings gain for each cohort of completers, separately for GE and non-GE programs, and the

cumulative (not discounted) earnings gain over the budget window. The regulation is estimated to generate \$32.3 billion of additional earnings gains over the budget window, both from GE and non-GE programs. Using the approach described in "Methodology for Costs, Benefits, and Transfers," we expect \$26.3 billion to benefit students and \$6.0 billion to benefit Federal and State governments and taxpayers.³³¹

TABLE 8.1—ANNUAL AND CUMULATIVE EARNINGS GAIN AND DISTRIBUTION BETWEEN STUDENTS AND GOVERNMENT
[Millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Single-year Earnings Gains of Each Cohort of Completers										
Non-GE	0	139	411	542	598	596	566	497	421	3,770
GE	0	232	470	570	590	561	510	447	376	3,755
Total	0	370	881	1,112	1,189	1,157	1,075	944	797	7,525
Cumulative Earnings Gain										
Cumulative gain	0	370	1,251	2,363	3,551	4,708	5,783	6,728	7,525	32,280
Student share	0	302	1,019	1,923	2,891	3,832	4,708	5,476	6,125	26,276
Gov't share	0	69	233	440	661	876	1,076	1,251	1,400	6,004

The final rule could also alter aggregate instructional spending, by shifting enrollment to higher-cost institutions (an increase in spending) or by reducing aggregate enrollment (a decrease in spending). Table 8.2 reports estimated annual and cumulative

changes in instructional spending, overall and separately for GE and non-GE programs. The net effect is an increase in aggregate cumulative instructional spending of \$2.7 billion (not discounted), though this masks differences between non-GE programs

(net increase in spending) and GE programs (net decrease in spending). Spending is reduced in the first year of the policy due to the decrease in enrollment, but then increases as more students transfer to more costly programs.

TABLE 8.2—INSTRUCTIONAL SPENDING CHANGE
[Millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	0	381	685	836	904	909	883	800	719	6,118
GE	0	–536	–456	–336	–301	–333	–399	–481	–576	–3,417
Total	0	–155	230	500	603	576	485	319	143	2,701

The rule would create transfers between students, the Federal Government, and among postsecondary institutions by shifting enrollment between programs, removing title IV, HEA eligibility for GE programs that fail a GE metric multiple times, and causing

some students to choose non-enrollment instead of a low value program. Table 8.3 reports the number of enrollments that transfer programs, remain enrolled at ineligible programs, or decline to enroll in postsecondary education altogether. We estimate that almost 1.5

million enrollments would transfer from low financial value programs to better programs over the decade. A more modest number would remain enrolled at programs that are no longer eligible for title IV, HEA aid.

TABLE 8.3—ESTIMATED ENROLLMENT OF TRANSFERS AND INELIGIBLE UNDER THE REGULATION

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE:										
Transfer	0	33,481	96,886	81,495	72,531	67,660	64,896	63,184	62,009	542,142
Inelig	0	0	0	0	0	0	0	0	0	0
GE:										
Transfer	0	204,541	195,213	132,844	96,996	79,268	70,668	66,360	64,057	909,948
Inelig	0	0	53,244	43,729	30,098	22,035	17,816	15,631	14,466	197,019
Total:										
Transfer	0	238,022	292,099	214,339	169,527	146,928	135,565	129,544	126,066	1,452,089
Inelig	0	0	53,244	43,729	30,098	22,035	17,816	15,631	14,466	197,019

³³¹ The earnings gains estimate in the NPRM did not include earnings gains over the full budget window, thereby underestimating that gain. For this

final RIA, we recalculated earnings gains to account for this more comprehensive budget impact, which

resulted in an increase in estimated earnings gains relative to the NPRM.

The resulting reductions in expenditures on title IV, HEA program funds from enrollment declines and continued enrollment at non-eligible institutions are classified as transfers from affected student loan borrowers

and Pell grant recipients to the Federal Government. The combined reduction in title IV, HEA expenditures was presented in the Net Budget Impacts section above. Transfers also include title IV, HEA program funds that follow

students as they shift from low-performing programs to higher-performing programs, which is presented in Table 8.4.

TABLE 8.4—ESTIMATED TITLE IV, HEA AID TRANSFERRED FROM FAILING TO PASSING PROGRAMS UNDER THE REGULATION
[\$2019, millions]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE	0	145	458	388	351	330	318	311	307	2,608
GE	0	1,109	1,057	720	530	434	387	362	349	4,948
Total	0	1,255	1,515	1,108	880	764	705	674	656	7,557

Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another. Table 8.5 provides our best estimate of the changes in annual monetized benefits, costs, and transfers as a result of these regulations. Our baseline estimate with a discount rate of 3 percent is that the regulation would

generate \$3.0 billion of annualized benefits against \$0.4 billion of annualized costs and \$1.3 billion of transfers to the Federal Government and \$0.7 billion transfers from failing programs to passing programs. A discount rate of 7 percent results in \$2.7 billion of benefits against \$0.4 billion of annualized costs and \$1.2 billion of

transfers to the Federal Government and \$0.7 billion transfers from failing programs to passing programs. Note that the accounting statement does not include benefits that are unquantified, such as benefits for students associated with lower default and better credit and benefits for institutions from improved information about their value.

TABLE 8.5—ACCOUNTING STATEMENT FOR PRIMARY SCENARIO

	Annualized Impact (millions, \$2023)	
	Discount rate = 3%	Discount rate = 7%
Benefits		
Earnings gain (net of taxes) for students	2,444	2,213
Additional Federal and State tax revenue and reductions in transfer program expenditure (not included in budget impact)	559	506
For students, lower default, better credit leading to family and business formation, more retirement savings. For institutions, increased enrollment and revenue associated with new enrollments from improved information about value	Not quantified.	
Costs		
Reduced instructional spending	258	241
Additional reporting by institutions	90	93
Warning/acknowledgment by institutions and students	12	12
Implementation of reporting, website, acknowledgment by ED	4	4
Time/moving cost for transfers; Investments to improve program quality	Not quantified.	
Transfers		
Transfer of Federal Pell dollars to Federal Government from enrollment reduction	709	667
Transfer of Federal loan dollars to Federal Government from reduced borrowing and greater repayment	607	564
Transfer of aid dollars from non-passing programs to passing programs	747	732
Transfer of State aid dollars from failing programs for dropouts	Not quantified.	

Sensitivity Analysis

We conducted the simulations of the rule while varying several key assumptions. Specifically, we provide estimates of the change in title IV, HEA volumes using varied assumptions about student transitions, student dropout, program performance, and the

earnings gains associated with enrollment shifts. We believe these to be the main sources of uncertainty in our model.

Varying Levels of Student Transition

Our primary analysis assumes rates of transfer and dropout for GE programs

based on the research literature, but these quantities are uncertain. The alternative models adjust transfer and dropout rates for all transfer groups to the rates for high alternatives and few alternatives, respectively, as shown in Table 6.5. As reported in Tables 8.6 and 8.7, we estimate that the regulations

the highest or lowest amount of transfer alternatives.

[Millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	29	63	94	101	105	108	107	104	97	808
Subs.	10	18	12	7	5	5	4	3	1	66
Unsub.	20	3	(67)	(119)	(152)	(176)	(198)	(220)	(244)	(1,153)
Grad PLUS	4	(37)	(121)	(184)	(223)	(247)	(263)	(277)	(290)	(1,639)
Par. PLUS	8	32	53	61	65	68	68	68	67	491
GE Programs:										
Pell	(195)	(484)	(754)	(867)	(920)	(999)	(1,097)	(1,213)	(1,348)	(7,877)
Subs.	(149)	(368)	(446)	(460)	(481)	(514)	(553)	(597)	(645)	(4,214)
Unsub.	(226)	(558)	(669)	(679)	(701)	(741)	(790)	(845)	(906)	(6,115)
Grad PLUS	(21)	(52)	(61)	(59)	(57)	(55)	(54)	(53)	(52)	(464)
Par. PLUS	(15)	(40)	(48)	(49)	(56)	(68)	(82)	(97)	(114)	(568)
Total										
Pell	(166)	(419)	(659)	(766)	(817)	(891)	(990)	(1,110)	(1,251)	(7,069)
Subs.	(138)	(350)	(434)	(453)	(474)	(506)	(545)	(589)	(638)	(4,127)
Unsub.	(206)	(555)	(736)	(798)	(854)	(917)	(988)	(1,064)	(1,150)	(7,268)
Grad PLUS	(17)	(89)	(182)	(244)	(281)	(302)	(317)	(329)	(342)	(2,103)
Par. PLUS	(7)	(8)	5	12	9	0	(13)	(29)	(47)	(77)

[Millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Non-GE Programs:										
Pell	16	43	73	95	113	129	137	142	142	890
Subs.	6	12	12	12	14	17	17	17	16	123
Unsub.	11	28	22	6	(6)	(16)	(29)	(44)	(62)	(91)
Grad PLUS	2	7	(3)	(24)	(39)	(49)	(57)	(64)	(72)	(300)
Par. PLUS	5	26	49	61	67	70	70	68	66	482
GE Programs:										
Pell	(187)	(550)	(921)	(1,126)	(1,184)	(1,236)	(1,302)	(1,395)	(1,513)	(9,414)
Subs.	(136)	(399)	(546)	(570)	(578)	(595)	(622)	(657)	(699)	(4,803)
Unsub.	(208)	(607)	(825)	(851)	(856)	(874)	(904)	(948)	(1,001)	(7,074)
Grad PLUS	(19)	(54)	(74)	(75)	(72)	(69)	(67)	(66)	(65)	(561)
Par. PLUS	(20)	(62)	(87)	(89)	(91)	(98)	(107)	(120)	(134)	(808)
Total:										
Pell	(170)	(508)	(848)	(1,030)	(1,070)	(1,106)	(1,164)	(1,253)	(1,371)	(8,520)
Subs.	(131)	(386)	(534)	(557)	(564)	(579)	(605)	(640)	(683)	(4,680)
Unsub.	(197)	(579)	(803)	(846)	(862)	(890)	(934)	(992)	(1,063)	(7,165)
Grad PLUS	(16)	(47)	(77)	(99)	(111)	(118)	(124)	(130)	(137)	(860)
Par. PLUS	(15)	(37)	(37)	(28)	(24)	(28)	(37)	(52)	(69)	(326)

alternative model will assume no program improvement in response to failing metrics.

As reported in Table 8.8, we estimate that the regulations would result in a reduction of title IV, HEA aid between fiscal years 2025 and 2033, regardless of if programs show improvement.

[Millions, \$2019]

[illegible]

TABLE 8.8—NO PROGRAM IMPROVEMENT SENSITIVITY ANALYSIS—ESTIMATED ANNUAL CHANGE IN TITLE IV, HEA AID VOLUME RELATIVE TO BASELINE—Continued
[Millions, \$2019]

	2025	2026	2027	2028	2029	2030	2031	2032	2033	Total
Pell	(199)	(511)	(815)	(962)	(1,039)	(1,137)	(1,252)	(1,387)	(1,541)	(8,843)
Subs.	(149)	(380)	(477)	(502)	(532)	(571)	(617)	(668)	(723)	(4,618)
Unsub.	(226)	(576)	(716)	(750)	(792)	(847)	(910)	(980)	(1,056)	(6,853)
Grad PLUS	(20)	(51)	(64)	(68)	(70)	(72)	(74)	(76)	(79)	(575)
Par. PLUS	(18)	(48)	(62)	(69)	(79)	(94)	(110)	(128)	(147)	(755)
Total:										
Pell	(174)	(455)	(721)	(846)	(898)	(973)	(1,069)	(1,190)	(1,334)	(7,660)
Subs.	(139)	(364)	(462)	(485)	(510)	(544)	(586)	(634)	(686)	(4,411)
Unsub.	(208)	(566)	(747)	(803)	(858)	(923)	(996)	(1,076)	(1,165)	(7,342)
Grad PLUS	(16)	(77)	(143)	(182)	(209)	(226)	(238)	(250)	(261)	(1,602)
Par. PLUS	(11)	(18)	(8)	(0)	(1)	(8)	(21)	(36)	(54)	(157)

Alternative Earnings Gain

Our primary analysis assumes that the earnings change associated with shifts in enrollment is equal to the difference in average earnings between groups defined by loan risk group, program performance category, and whether the program is a GE program or not, multiplied by an adjustment factor equal to 0.75. This adjustment factor was derived from regression models where we compared the earnings difference between passing and failing programs conditional on credential level with and without a rich set of student characteristics controls. The estimated earnings gain associated with the rule scales directly with the value of this adjustment factor. A value of 1.0 (all of the difference in average earnings between groups would manifest as earnings gain) would increase the total annualized earnings gain for students from \$2.4 billion up to \$3.3 billion (3 percent discount rate).

A value of 0.40 reduces it to \$1.3 billion; a value of 0.20 reduces it to \$0.7 billion. The net fiscal externality increases or decreases proportionately. Each of these two scenarios would involve more of the raw earnings difference between passing and failing programs of the same credential level being explained by factors we are not able to measure (such as student academic preparation) than those that we are able to measure (such as race, gender, parent education, family income, and Pell receipt).³³² Even at

these low values for the adjustment factor, the estimated earnings benefits of the rule by themselves outweigh the estimated costs.

9. Distributional Consequences

The final regulations advance distributional equity aims because the benefits of the regulation—better information, increased earnings, and more manageable debt repayment—would disproportionately be realized by students who otherwise would have low earnings. Students without access to good information about program performance tend to be more disadvantaged; improved transparency about program performance would be particularly valuable to these students. The final regulations improve program quality in the undergraduate certificate sector in particular, which, as documented above, disproportionately enrolls low-income students. Students already attending high-quality colleges, who tend to be more advantaged, would be relatively unaffected by the regulation. The major costs of the program involve additional paperwork and instructional spending, which are not incurred by students directly.

10. Alternatives Considered

As part of the development of these regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and States. Non-Federal negotiators

that an earnings gain of \$10,000 is associated with a value added gain of roughly \$6,000 over the entire sample, of roughly \$4,000 for scores below 1200, and of roughly \$2,000 for scores below 1000. These relationships imply parameter values of 0.72, 0.62, 0.60, 0.40, and 0.20, respectively. Again, institution-level correlations may not be directly comparable to program-level data.

submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

In response to comments received and further internal consideration of these final regulations, the Department reviewed and considered various changes to the proposed regulations detailed in the NPRM. We described the changes made in response to public comments in the Analysis of Comments and Changes section of this preamble. We summarize below the major proposals that we considered but ultimately chose not to implement in these regulations. In developing these final regulations, we contemplated the budgetary impact, administrative burden, and anticipated effectiveness of the options we considered.

D/E Rate Only

The Department considered using only the D/E rates metric, consistent with the 2014 Prior Rule. Tables 10.1 and 10.2 show the share of GE and non-GE programs and enrollment that would fail under only the D/E metric compared to our preferred rule that considers both D/E and EP metrics. A greater number of programs do not meet standards when considering both D/E and EP instead of D/E only, especially among certificate programs.

As discussed earlier at length, the D/E and EP measure distinct outcomes of gainful employment, and the EP adds an important protection for students and taxpayers. Even small amounts of debt can be unmanageable borrowers with low earnings, as shown in the RIA and in research.³³³ With the inclusion of the

³³² In unpublished analysis of approximately 600 programs (defined by 2-digit CIP by institution) at four-year public colleges in Texas as part of their published work, Andrews & Stange (2019) find that a 1 percent increase in log program earnings (unadjusted) is associated with a .72 percent increase in log program earnings after controlling for student race/ethnicity, limited English proficiency, economic disadvantage, and achievement test scores. Additionally controlling for students' college application and admissions behavior reduces this to 0.62. Using the correlation of institution-level average earnings and value-added in Figure 2.1 of Hoxby (2018), we estimate

³³³ See Brown, Meta *et al.* (2015). Looking at Student Loan Defaults Through a Larger Window. Liberty Street Economics, Fed. Reserve Bank of N.Y. (https://libertystreeteconomics.newyorkfed.org/2015/02/looking_at_student_loan_defaults_through_a_larger_window/).

EP, the Department affirms that programs should help students reach a minimal level of labor market earnings.

TABLE 10.1—PERCENT OF GE STUDENTS AND PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E OR EP

	Programs		Students	
	Fail D/E only	Fail D/E or EP	Fail D/E only	Fail D/E or EP
Public:				
UG Certificates	0.0	1.0	0.4	4.4
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.1	0.1	0.4	0.4
Total	0.0	0.9	0.4	4.1
Private, Nonprofit:				
UG Certificates	0.4	5.6	3.9	42.9
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	0.6	0.7	2.7	3.5
Total	0.4	2.6	3.3	28.5
Proprietary:				
UG Certificates	5.0	34.4	8.7	52.8
Associate	10.7	15.0	33.7	38.5
Bachelor's	10.7	10.9	24.3	24.4
Post-BA Certs	0.0	0.0	0.0	0.0
Master's	9.7	9.7	16.6	16.6
Doctoral	8.3	8.3	10.6	10.6
Professional	13.8	13.8	50.7	50.7
Grad Certs	4.8	7.3	37.9	38.6
Total	7.7	23.0	20.2	34.1
Foreign Private:				
UG Certificates	0.0	0.0	0.0	0.0
Post-BA Certs	0.0	0.0	0.0	0.0
Grad Certs	1.5	1.5	84.2	84.2
Total	0.9	0.9	79.6	79.6
Foreign For-Profit:				
Master's	0.0	0.0	0.0	0.0
Doctoral	0.0	0.0	0.0	0.0
Professional	28.6	28.6	20.3	20.3
Total	11.8	11.8	17.2	17.2

TABLE 10.2—PERCENT OF NON-GE PROGRAMS AND ENROLLMENT AT GE PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E OR EP

	Programs		Students	
	Fail D/E only	Fail D/E or EP	Fail D/E only	Fail D/E or EP
Public:				
Associate	0.2	1.7	0.5	7.8
Bachelor's	0.9	1.4	1.3	1.8
Master's	0.3	0.3	1.2	1.2
Doctoral	0.2	0.2	2.6	2.6
Professional	3.3	3.3	7.5	7.5
Total	0.5	1.2	1.0	4.5
Private, Nonprofit:				
Associate	2.6	3.3	22.5	24.7
Bachelor's	0.6	0.9	2.7	4.3
Master's	1.7	1.9	4.1	4.7
Doctoral	1.9	1.9	15.5	15.5
Professional	16.7	17.5	34.1	34.7
Total	1.2	1.5	5.8	7.1
Foreign Private:				
Associate	0.0	0.0	0.0	0.0
Bachelor's	0.1	0.1	1.2	1.2
Master's	0.1	0.1	1.8	1.9
Doctoral	0.0	0.0	0.0	0.0
Professional	3.4	3.4	20.7	20.7

TABLE 10.2—PERCENT OF NON-GE PROGRAMS AND ENROLLMENT AT GE PROGRAMS THAT FAIL UNDER D/E ONLY VS. D/E OR EP—Continued

	Programs		Students	
	Fail D/E only	Fail D/E or EP	Fail D/E only	Fail D/E or EP
Total	0.2	0.2	2.9	2.9

Alternative Earnings Thresholds

The Department examined the consequences of two different ways of computing the earnings threshold. For the first, we computed the earnings threshold as the annual earnings among all respondents aged 25–34 in the ACS who have a high school diploma or GED, but no postsecondary education. The second is the median annual earnings among respondents aged 25–34 in the ACS who have a high school diploma or GED, but no postsecondary education, and who worked a full year

prior to being surveyed. These measures, which are included in the 2022 PPD, straddle our preferred threshold, which includes all respondents in the labor force, but excludes those that are not in the labor force.

Tables 10.3 and 10.4 reports the share of programs and enrollment that would pass GE metrics under three different earnings threshold methods, with our approach in the middle column. The share of enrollment in undergraduate proprietary certificate programs that would fail ranges from about 30 percent

under the lowest threshold up to 61 percent under the highest threshold. The failure rate for public undergraduate certificate programs is much lower than proprietary programs under all three scenarios, ranging from about 2 percent for the lowest threshold to 9 percent under the highest. The earnings threshold chosen would have a much smaller impact on failure rates for degree programs, which range from about 34 percent to 42 percent of enrollment for associate programs and essentially no impact for bachelor's degree or higher programs.

TABLE 10.3—SHARE OF ENROLLMENT IN GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	% Failing		Total	
	DTE + lower EP	DTE + medium EP	DTE + higher EP	Number of enrollees
Public:				
UG Certificates	1.7	4.4	9.1	869,600
Post-BA Certs	0.0	0.0	0.0	12,600
Grad Certs	0.4	0.4	0.4	41,900
Private, Nonprofit:				
UG Certificates	25.8	40.5	43.0	77,900
Post-BA Certs	0.0	0.0	0.0	7,900
Grad Certs	2.7	2.7	4.7	35,700
Proprietary:				
UG Certificates	30.0	50.8	61.2	549,900
Associate	33.9	37.1	42.4	326,800
Bachelor's	24.3	24.3	24.7	675,800
Post-BA Certs	0.0	0.0	0.0	800
Master's	16.6	16.6	16.6	240,000
Doctoral	10.6	10.6	10.6	54,000
Professional	50.7	50.7	50.7	12,100
Grad Certs	38.3	38.6	38.6	10,800

Note: Enrollment counts rounded to the nearest hundred.

TABLE 10.4—SHARE OF GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	% Failing		Total	
	DTE + lower EP	DTE + medium EP	DTE + higher EP	Number of Programs
Public:				
UG Certificates	0.6	1.0	1.6	19,00
Post-BA Certs	0.0	0.0	0.0	900
Grad Certs	0.1	0.1	0.1	1,900
Private, Nonprofit:				
UG Certificates	2.7	4.7	5.5	1,400
Post-BA Certs	0.0	0.0	0.0	600
Grad Certs	0.6	0.6	0.6	1,400
Proprietary:				
UG Certificates	20.8	32.0	38.0	3,200
Associate	10.8	13.8	17.6	1,700
Bachelor's	10.5	10.6	11.2	1,000
Post-BA Certs	0.0	0.0	0.0	50
Master's	9.6	9.6	9.6	500

TABLE 10.4—SHARE OF GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET—Continued

	% Failing		Total	
	DTE + lower EP	DTE + medium EP	DTE + higher EP	Number of Programs
Doctoral	8.2	8.2	8.2	100
Professional	12.5	12.5	12.5	30
Grad Certs	5.5	7.0	7.0	100

Note: Program counts rounded to the nearest 100, except where 50 or fewer.

Tables 10.5 and 10.6 illustrate this for non-GE programs. As with GE programs, the earnings threshold chosen would have a relatively small impact on the share of Bachelors' or higher programs

that fail but would impact failure rates for associate degree programs at public institutions, where the share of enrollment in failing programs ranges from about 2 percent at the lowest

threshold to 23 percent at the highest. Our measure would result in 8 percent of enrollment in public failing programs.

TABLE 10.5—SHARE OF ENROLLMENT IN NON-GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	% Failing			Total Number of Enrollees
	DTE + lower EP	DTE + medium EP	DTE + higher EP	
Public:				
Associate	1.6	7.8	23.2	5,496,800
Bachelor's	1.4	1.8	4.2	5,800,700
Master's	1.2	1.2	1.3	760,500
Doctoral	2.6	2.6	2.6	145,200
Professional	7.5	7.5	7.5	127,500
Private, Nonprofit:				
Associate	22.5	23.2	25.3	266,900
Bachelor's	3.5	3.9	5.2	2,651,300
Master's	4.2	4.2	4.4	796,100
Doctoral	15.5	15.5	15.5	142,900
Professional	34.2	34.2	34.2	130,400

Note: Enrollment counts rounded to the nearest hundred.

TABLE 10.6—SHARE OF NON-GE PROGRAMS THAT FAIL, BY WHERE EARNINGS THRESHOLD IS SET

	% Failing			Total number of programs
	DTE + lower EP	DTE + medium EP	DTE + higher EP	
Public:				
Associate	0.4	1.7	3.6	27,300
Bachelor's	1.0	1.3	2.9	24,300
Master's	0.3	0.3	0.3	14,600
Doctoral	0.2	0.2	0.2	5,700
Professional	3.2	3.2	3.2	600
Private, Nonprofit:				
Associate	2.6	2.8	3.5	2,300
Bachelor's	0.7	0.9	1.3	29,800
Master's	1.7	1.8	1.8	10,400
Doctoral	1.9	1.9	1.9	2,900
Professional	16.8	16.8	16.8	500

Note: Program counts rounded to the nearest 100.

No Reporting and Acknowledgment for Non-GE Programs

The Department considered proposing to apply the reporting and acknowledgment requirements only to GE programs, and calculating D/E rates and the earnings premium measure only for these programs, similar to the 2014 Prior Rule. This approach, however, would fail to protect students, families,

and taxpayers from investing in non-GE programs that deliver low value and poor debt and earnings outcomes. As higher education costs and student debt levels increase, students, families, institutions, and the public have a commensurately growing interest in ensuring their higher education investments are justified through positive career, debt, and earnings

outcomes for graduates, regardless of the sector in which the institution operates or the credential level of the program. Furthermore, comprehensive performance information about all programs is necessary to guide students that would otherwise choose failing GE programs to better options.

Small Program Rates

While we believe the D/E rates and earnings premium measure are reasonable and useful metrics for assessing debt and earnings outcomes, we acknowledge that the minimum n-size of 30 completers would exempt small programs from these Financial Value Transparency measures. In our initial proposals during negotiated rulemaking, the Department considered calculating small program rates in such instances. These small program rates would have been calculated by combining all of an institution's small programs to produce the institution's small program D/E rates and earnings premium measure, which would be used for informational purposes only. In the case of GE programs, these small program rates would not have resulted in program eligibility consequences. Several negotiators questioned the usefulness of the small program rates because they would not provide information specific to any particular program, and because an institution's different small programs in various disciplines could lead to vastly different debt and earnings outcomes. In addition, several negotiators expressed concerns about the use of small program rates as a supplementary performance measure under proposed § 668.13(e). Upon consideration of these points, and in the interest of simplifying the final rule, the Department has opted to omit the small program rates.

Alternative Components of the D/E Rates Measure

The Department considered alternative ways of computing the D/E rates measure, including:

- Lower completer thresholds n-size
- Different ways of computing interest rates
- Different amortization periods

We concluded that the parameters used in the D/E rates and earnings premium calculations were most consistent with best practices identified in prior analysis and research.

Discretionary Earnings Rate

The Department considered simplifying the D/E rates metric by only including a discretionary earnings rate. We believe that using only the discretionary earnings rate would be insufficient because there may be some instances in which a borrower's annual earnings would be sufficient to pass an 8 percent annual debt-to-earnings threshold, even if that borrower's discretionary earnings are insufficient to pass a 20 percent discretionary debt-to-earnings threshold. Utilizing both

annual and discretionary D/E rates would provide a more complete picture of a program's true debt and earnings outcomes and would be more generous to institutions because a program that passes either the annual earnings rate or the discretionary earnings rate would pass the D/E rates metric.

Pre- and Post- Earnings Comparison

A standard practice for evaluating the effectiveness of postsecondary programs is to compare the earnings of students after program completion to earnings before program enrollment, to control for any student-specific factors that determine labor market success that should not be attributed to program performance. While the Department introduced limited analysis of pre-program earnings from students' FAFSA data into the evidence above, it is not feasible to perform such comparisons on a wide and ongoing scale in the regulation. Pre-program earnings data is only available for students who have labor market experience prior to postsecondary enrollment, which excludes many students who proceed directly to postsecondary education from high school. Furthermore, earnings data from part-time work during high school is mostly uninformative for earnings potential after postsecondary education. Although some postsecondary programs enroll many students with informative pre-program earnings, many postsecondary programs would lack sufficient numbers of such students to reliably incorporate pre-program earnings from the FAFSA into the regulation.

11. Regulatory Flexibility Act

This section considers the effects that the final regulations may have on small entities in the Educational Sector as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.*, Public Law 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a “significant impact on a substantial number of small entities.” As we describe below, the Department anticipates that this

regulatory action will have a significant economic impact on a substantial number of small entities. We therefore present this Final Regulatory Flexibility Analysis.

Description of the Reasons for Agency Action

The Secretary is establishing new regulations to address concerns about the rising cost of postsecondary education and training and increased student borrowing by establishing a final financial value transparency framework to encourage eligible postsecondary programs to produce acceptable debt and earnings outcomes, apprise current and prospective students of those outcomes, and provide better information about program price. In these final regulations, the Secretary also adopts a GE program accountability framework that establishes eligibility and certification requirements tied to the debt-to-earnings and median earnings (relative to high school graduates) of program graduates. The GE program accountability framework will address ongoing concerns about educational programs that are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings or earnings lower than that of a typical high school graduate. These programs often lead to default or provide no earnings benefit beyond that provided by a high school education, failing to fulfill their intended goal of preparing students for gainful employment.

The regulations will provide a needed framework for oversight around title IV, HEA institutional eligibility for GE programs and increased transparency for all programs. The regulations will also clarify how the Department will determine whether a program is of reasonable length. The effect on small entities will vary by the extent that they currently participate in such programs or that they choose to do so going forward. Small entities could be vulnerable to program closure of poorly performing programs.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

These final regulations amend the Student Assistance General Provisions regulations issued under the HEA in 34 CFR part 668. The changes to part 668 are authorized by 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474.

The regulations are also designed to protect students and taxpayers from unreasonable risks. Inadequate consumer information could result in students enrolling in programs that will not help them benefit them financially. In addition, institutions may use taxpayer funds in ways that were not what Congress or the Department intended, resulting in greater risk to the taxpayers of waste, fraud, and abuse and to the institution of undeserved negative program review or audit findings that could result in liabilities. These regulations attempt to limit risks to students and taxpayers resulting by enhancing our oversight of GE programs and providing additional transparency for all programs.

Description of and, Where Feasible, An Estimate of the Number of Small Entities to Which the Regulations Will Apply

The Small Business Administration (SBA) defines “small institution” using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to

which the Office of Postsecondary Education’s (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of these final regulations, the Department continues to define “small entities” by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for small less-than-two-year institutions (below associate degrees) is less than 750 full-time-equivalent (FTE) students and for small institutions of at least two but less-than-4-years and 4-year institutions, less than 1,000 FTE students.³³⁴ As a result of discussions with the Small Business Administration, this is an update from the standard used in some prior rules, such as the NPRM associated with this final rule, “Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB),” published in the **Federal Register** May

19, 2023,³³⁵ the final rule published in the **Federal Register** on July 10, 2023, for the improving income driven repayment rule,³³⁶ and the final rule published in the **Federal Register** on October 28, 2022, “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control.”³³⁷ Those prior rules applied an enrollment standard for a small two-year institution of less than 500 full-time-equivalent (FTE) students and for a small 4-year institution, less than 1,000 FTE students.³³⁸ The Department consulted with the Office of Advocacy for the SBA and the Office of Advocacy has approved the revised alternative standard for this rulemaking. The Department continues to believe this approach most accurately reflects a common basis for determining size categories that is linked to the provision of educational services and that it captures a similar universe of small entities as the SBA’s revenue standard.

TABLE 11.1—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

	Small	Total	Percent
Proprietary	2,114	2,331	91
2-year	1,875	1,990	94
4-year	239	341	70
Private not-for-profit	997	1,831	54
2-year	199	203	98
4-year	798	1,628	49
Public	524	1,924	27
2-year	461	1,145	40
4-year	63	779	8
Total	3,635	6,086	60

Source: 2020–21 IPEDS data reported to the Department.

Table 11.1 summarizes the number of institutions potentially affected by these final regulations. As seen in Table 11.2,

the average total revenue at small institutions ranges from \$3.0 million for

proprietary institutions to \$16.5 million at private institutions.

TABLE 11.2—TOTAL REVENUES AT SMALL INSTITUTIONS

	Average	Total
Proprietary	2,959,809	6,257,035,736
2-year	2,257,046	4,231,961,251
4-year	8,473,115	2,025,074,485
Private not-for-profit	16,531,376	16,481,781,699
2-year	3,664,051	729,146,103

³³⁴ In regulations prior to 2016, the Department categorized small businesses based on tax status. Those regulations defined “nonprofit organizations” as “small organizations” if they were independently owned and operated and not dominant in their field of operation, or as “small entities” if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations

as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric

to all types of institutions, allowing consistent comparison across all types.

³³⁵ 88 FR 32300 (May 19, 2023).

³³⁶ 88 FR 43820 (July 10, 2023).

³³⁷ 87 FR 65426 (Oct. 28, 2022).

³³⁸ In those prior rules, at least two but less-than-four-years institutions were considered in the broader two-year category. In this iteration, after consulting with the Office of Advocacy for the SBA, we separate this group into its own category.

TABLE 11.2—TOTAL REVENUES AT SMALL INSTITUTIONS—Continued

	Average	Total
4-year	19,740,145	15,752,635,596
Public	11,084,101	5,808,068,785
2-year	8,329,653	3,839,969,872
4-year	31,239,665	1,968,098,913
Total	7,853,339	28,546,886,220

Note: Based on analysis of IPEDS enrollment and revenue data for 2020–21.

These final regulations require additional reporting and compliance by title IV, HEA participating postsecondary institutions, including small entities, and will have a significant impact on a substantial number of small entities. As described in a previous section, institutions are exempt from the reporting requirements if none of their groups of substantially similar programs have more than 30 completers in total during the four most recently completed award years. Furthermore, GE programs at small institutions could be at risk of losing the ability to distribute title IV, HEA funds under the GE program accountability framework if they fail either the debt-to-earnings (D/E) rate measure or earnings premium (EP) measure. Non-GE programs at small institutions, excluding undergraduate associate and bachelor's degree programs, that fail the

D/E metric would be required to have students acknowledge having seen this information prior to entering into enrollment agreements.

Therefore, many small entities will be impacted by the reporting and compliance aspects of the rule, which we quantify below. As we describe in more detail below, the Department estimates that 1.4 percent of non-GE programs at small institutions would fail the D/E metric, therefore triggering the acknowledgment requirement. The Department also estimates that 12.8 percent of GE programs at small institutions would fail either the D/E or EP metric, therefore, being at risk of losing title IV, HEA eligibility. GE programs represent 46 percent of enrollment at small institutions.

The Department's analysis shows programs at small institutions are much more likely to have insufficient sample size to compute and report D/E and EP

metrics, though the rate of failing to pass both metrics is higher for programs at such institutions.³³⁹

Table 11.3 and 11.4 show the number and percentage of non-GE enrollees and non-GE programs at small institutions in each status relative to the performance standard. The share of non-GE programs that have sufficient data and fail the D/E metric is higher for programs at small institutions (1.4 percent) than it is for all institutions (0.8 percent, Table 4.5). Failing the D/E metric for non-GE programs initiates a requirement that the institution must have title IV, HEA students acknowledge having seen the information before an enrollment agreement can be signed. The share of title IV, HEA enrollment in such programs is also higher at small institutions (8.6 percent for small institutions vs. 2.1 percent for all institutions, Table 4.4).

TABLE 11.3—NUMBER OF ENROLLEES IN NON-GE PROGRAMS AT SMALL INSTITUTIONS BY GE RESULT, BY CONTROL, IHE TYPE, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
Associate	89,200	68.8	28,100	21.7	0	0.0	0	0.0	12,300	9.5
Bachelor's	9,700	72.8	3,000	22.1	0	0.0	0	0.0	689	5.1
Master's	500	32.2	1,100	67.8	0	0.0	0	0.0	0	0.0
Doctoral	300	36.3	600	63.7	0	0.0	0	0.0	0	0.0
Professional	2,100	45.3	1,400	29.8	1,200	24.9	0	0.0	0	0.0
Total	101,900	67.8	34,100	22.7	1,200	0.8	0	0.0	13,000	8.7
Private, Nonprofit:										
Associate	28,700	57.0	15,800	31.4	2,500	5.0	2,100	4.1	1,300	2.5
Bachelor's	162,500	74.9	41,400	19.1	4,600	2.1	5,100	2.4	3,400	1.5
Master's	29,600	61.1	14,600	30.2	3,100	6.3	1,100	2.3	54	0.1
Doctoral	7,600	45.4	3,600	21.3	5,500	32.9	100	0.4	0	0.0
Professional	9,000	25.0	7,400	20.5	19,400	53.8	0	0.0	200	0.7
Total	237,400	64.4	82,700	22.5	35,100	9.5	8,300	2.3	4,900	1.3
Total:										
Associate	117,900	65.5	43,900	24.4	2,500	1.4	2,100	1.2	13,600	7.6
Bachelor's	172,300	74.8	44,300	19.2	4,600	2.0	5,100	2.2	4,000	1.8
Master's	30,100	60.2	15,700	31.4	3,100	6.1	1,100	2.2	100	0.1
Doctoral	8,000	45.0	4,200	23.5	5,500	31.2	100	0.4	0	0.0
Professional	11,100	27.3	8,800	21.6	20,500	50.5	0	0.0	200	0.6
Total	339,300	65.4	116,900	22.5	36,300	7.0	8,300	1.6	18,000	3.5

Note: Enrollment counts in this table have been rounded to the nearest 100.

³³⁹ The minimum number of program completers in a 2-year cohort that is required for the Department to compute the D/E and EP

performance metrics is referred to as the "n-size." An n-size of 30 is used in the final rule; GE and non-GE programs with fewer than 30 completers

across 2 years would not have performance metrics computed.

TABLE 11.4—NUMBER OF NON-GE PROGRAMS AT SMALL INSTITUTIONS BY GE RESULT, BY CONTROL, IHE TYPE, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
Associate	2,180	94.6	96	4.2	0	0.0	0	0.0	28	1.2
Bachelor's	195	95.1	9	4.4	0	0.0	0	0.0	1	0.5
Master's	30	81.1	7	18.9	0	0.0	0	0.0	0	0.0
Doctoral	17	89.5	2	10.5	0	0.0	0	0.0	0	0.0
Professional	9	60.0	4	26.7	2	13.3	0	0.0	0	0.0
Total	2,431	94.2	118	4.6	2	0.1	0	0.0	29	1.1
Private, Nonprofit:										
Associate	759	90.8	62	7.4	3	0.4	7	0.8	5	0.6
Bachelor's	4,204	94.8	176	4.0	19	0.4	19	0.4	15	0.3
Master's	924	87.9	95	9.0	24	2.3	6	0.6	2	0.2
Doctoral	198	88.4	11	4.9	14	6.2	1	0.4	0	0.0
Professional	86	67.2	12	9.4	27	21.1	0	0.0	3	2.3
Total	6,171	92.5	356	5.3	87	1.3	33	0.5	25	0.4
Total:										
Associate	2,939	93.6	158	5.0	3	0.1	7	0.2	33	1.1
Bachelor's	4,399	94.8	185	4.0	19	0.4	19	0.4	16	0.3
Master's	954	87.7	102	9.4	24	2.2	6	0.6	2	0.2
Doctoral	215	88.5	13	5.3	14	5.8	1	0.4	0	0.0
Professional	95	66.4	16	11.2	29	20.3	0	0.0	3	2.1
Total	8,602	93.0	474	5.1	89	1.0	33	0.4	54	0.6

Tables 11.5 and 11.6 report similar tabulations for GE programs at small institutions. GE programs include non-degree certificate programs at all institutions and all degree programs at proprietary institutions. GE programs at small institutions are more likely to

have a failing D/E or EP metrics (12.8 percent of all GE programs at small institutions, compared to 5.4 percent for all institutions in Table 4.9) and have a greater share of enrollment in such programs (40.5 percent vs. 23.8 percent for all institutions in Table 4.8). GE

programs that fail the same performance metric in two out of three consecutive years will become ineligible to administer Federal title IV, HEA student aid.

TABLE 11.5—NUMBER OF ENROLLEES IN GE PROGRAMS AT SMALL INSTITUTIONS BY GE RESULT, BY CONTROL, IHE TYPE, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
UG Certificates ..	53,800	74.7	15,600	21.6	0	0.0	0	0.0	2,700	3.7
Post-BA Certs ...	<50	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	100	77.4	<50	22.6	0	0.0	0	0.0	0	0.0
Total	54,000	74.7	15,600	21.6	0	0.0	0	0.0	2,700	3.7
Private, Nonprofit:										
UG Certificates ..	9,400	41.7	6,600	29.3	0	0.0	400	1.7	6,200	27.3
Post-BA Certs ...	1,400	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	1,700	83.7	0	0.0	300	16.3	0	0.0	0	0.0
Total	12,500	48.1	6,600	25.4	300	1.3	400	1.5	6,200	23.7
Proprietary:										
UG Certificates ..	55,600	21.8	52,900	20.7	100	0.0	29,800	11.7	116,500	45.7
Associate	22,400	38.7	19,700	34.0	7,200	12.5	5,400	9.4	3,100	5.4
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.1	200	1.7	0	0.0
Post-BA Certs ...	<50	55.8	<50	44.2	0	0.0	0	0.0	0	0.0
Master's	3,200	80.4	200	3.9	100	2.0	500	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Certs	300	77.8	0	0.0	0	0.0	0	0.0	73	22.2
Total	93,000	27.7	76,500	22.8	10,400	3.1	36,000	10.7	119,700	35.7
Total:										
UG Certificates ..	118,800	34.0	75,100	21.5	100	0.0	30,200	8.6	125,300	35.8
Associate	22,400	38.7	19,700	34.0	7,200	12.5	5,400	9.4	3,100	5.4
Bachelor's	8,800	65.1	3,400	25.1	1,100	8.1	200	1.7	0	0.0

TABLE 11.5—NUMBER OF ENROLLEES IN GE PROGRAMS AT SMALL INSTITUTIONS BY GE RESULT, BY CONTROL, IHE TYPE, AND CREDENTIAL LEVEL—Continued

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Post-BA Certs ...	1,400	97.4	<50	2.6	0	0.0	0	0.0	0	0.0
Master's	3,200	80.4	200	3.9	100	2.0	500	13.6	0	0.0
Doctoral	1,700	75.4	300	11.3	300	13.3	0	0.0	0	0.0
Professional	1,000	37.7	100	3.7	1,600	58.6	0	0.0	0	0.0
Grad Certs	2,100	82.6	<50	1.4	300	13.1	0	0.0	73	2.9
Total	159,500	36.8	98,800	22.8	10,700	2.5	36,400	8.4	128,500	29.6

Note: Enrollment counts in this table have been rounded to the nearest 100.

TABLE 11.6—NUMBER OF GE PROGRAMS AT SMALL INSTITUTIONS BY GE RESULT, BY CONTROL, IHE TYPE, AND CREDENTIAL LEVEL

	Result in 2019									
	No D/E or EP data		Pass		Fail D/E only		Fail both D/E and EP		Fail EP only	
	N	%	N	%	N	%	N	%	N	%
Public:										
UG Certificates ..	3,194	93.4	174	5.1	0	0.0	0	0.0	50	1.5
Post-BA Certs ...	6	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	13	92.9	1	7.1	0	0.0	0	0.0	0	0.0
Total	3,213	93.5	175	5.1	0	0.0	0	0.0	50	1.5
Private, Nonprofit:										
UG Certificates ..	352	81.5	44	10.2	0	0.0	2	0.5	34	7.9
Post-BA Certs ...	138	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Grad Certs	103	99.0	0	0.0	1	1.0	0	0.0	0	0.0
Total	593	88.0	44	6.5	1	0.1	2	0.3	34	5.0
Proprietary:										
UG Certificates ..	1,202	53.0	285	12.6	1	0.0	133	5.9	648	28.6
Associate	626	76.4	112	13.7	38	4.6	23	2.8	20	2.4
Bachelor's	199	88.1	16	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs ...	11	91.7	1	8.3	0	0.0	0	0.0	0	0.0
Master's	92	92.9	2	2.0	1	1.0	4	4.0	0	0.0
Doctoral	33	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	16	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	16	84.2	0	0.0	0	0.0	0	0.0	3	15.8
Total	2,195	62.7	418	11.9	53	1.5	162	4.6	671	19.2
Total:										
UG Certificates ..	4,748	77.6	503	8.2	1	0.0	135	2.2	732	12.0
Associate	626	76.4	112	13.7	38	4.6	23	2.8	20	2.4
Bachelor's	199	88.1	16	7.1	9	4.0	2	0.9	0	0.0
Post-BA Certs ...	155	99.4	1	0.6	0	0.0	0	0.0	0	0.0
Master's	92	92.9	2	2.0	1	1.0	4	4.0	0	0.0
Doctoral	33	94.3	1	2.9	1	2.9	0	0.0	0	0.0
Professional	16	80.0	1	5.0	3	15.0	0	0.0	0	0.0
Grad Certs	132	96.4	1	0.7	1	0.7	0	0.0	3	2.2
Total	6,001	78.8	637	8.4	54	0.7	164	2.2	755	9.9

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As noted in the Paperwork Reduction Act section, burden related to the final

regulations will be assessed in a separate information collection process and that burden is expected to involve individuals more than institutions of any size.

The final rule involves four types of reporting and compliance requirements for institutions, including small entities. First, under § 668.43, institutions will be required to provide additional

programmatic information to the Department and make this and additional information assembled by the Department available to current and prospective students by providing a link to a Department-administered program information website. Second, under § 668.407, the Department will require acknowledgments from current and prospective students if an eligible non-

GE certificate or graduate program leads to high debt outcomes based on its D/E rates. Third, under § 668.408, institutions will be required to provide new annual reporting about programs, current students, and students that complete or withdraw during each award year. As described in the Preamble of this final rule, reporting includes student-level information on

enrollment, cost of attendance, tuition and fees, allowances for books and supplies, allowances for housing, institutional and other grants, and private loans disbursed. Finally, under § 668.605, institutions with GE programs that fail at least one of the metrics will be required to provide warnings to current and prospective students about the risk of losing title IV,

HEA eligibility and would require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.

Initial estimates of the reporting and compliance burden for these four items for small entities are provided in Table 11.7, though these are subject to revision as the content of the required reporting is refined.³⁴⁰

TABLE 11.7—INITIAL AND SUBSEQUENT REPORTING AND COMPLIANCE BURDEN FOR SMALL ENTITIES

§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	\$6,512,697.
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the program information website maintained by the Secretary if an eligible program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution may enter into an enrollment agreement with the student.	\$22,459.
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	\$32,636,989 initial year; \$12,502,598 subsequent years.
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may disburse any title IV, HEA funds.	\$21,227.

As described in this preamble, much of the necessary information for GE programs would already have been reported to the Department under the 2014 Prior Rule, and as such we believe the added burden of this reporting relative to existing requirements would be reasonable. Furthermore, 88 percent of public and 47 percent of private nonprofit institutions operated at least one GE program and, therefore, have experience with similar data reporting for the subset of their students enrolled in certificate programs under the 2014 Prior Rule. Moreover, many institutions report more detailed information on the components of cost of attendance and other sources of financial aid in the Federal National Postsecondary Student Aid Survey (NPSAS) administered by the National Center for Education Statistics. Finally, the Department proposes flexibility for institutions to avoid reporting data on students who completed programs in the past for the first year of implementation, and instead to use data on more recent

completer cohorts to estimate median debt levels. In part, we intend to ease the administrative burden of providing this data for programs that were not covered by the 2014 Prior Rule reporting requirements, especially for the small number of institutions that may not previously have had any programs subject to these requirements.

The Department recognizes that institutions may have different processes for record-keeping and administering financial aid, so the burden of the GE and financial transparency reporting could vary by institution. As noted previously, a high percentage of institutions have already reported data related to the 2014 Prior Rule or similar variables for other purposes. Many institutions can query systems or adapt existing reports to meet these requirements. On the other hand, some institutions may still have data entry processes that are very manual, and generating the information for their programs could involve many more hours and resources. Small

entities may be less likely to have invested in systems and processes that allow easy data reporting because it is not needed for their operations. Institutions may fall in between these poles and be able to automate the reporting of some variables but need more effort for others.

We believe that, while the reporting relates to program or student-level information, the reporting process is likely to be handled at the institutional level. There would be a cost to establish the query or report and validate it upfront, but then the marginal increase in costs to process additional programs or students should not be too significant. The reporting process will involve personnel with different skills and responsibility levels. We estimated this using Bureau of Labor statistics median hourly wage rates for postsecondary administrators of \$48.05.³⁴¹ Table 11.8 presents the Department's estimates of the hours associated with the reporting requirements.

TABLE 11.8—ESTIMATED HOURS FOR REPORTING REQUIREMENTS

Process	Hours	Hours basis
Review systems and existing reports for adaptability for this reporting	10	Per institution.
Develop reporting query/result template:		
Program-level reporting	15	Per institution.
Student-level reporting	30	Per institution.
Run test reports:		
Program-level reporting	0.25	Per institution.
Student-level reporting	0.5	Per institution.

³⁴⁰ For §§ 668.43, 668.407, and 668.605, we obtained these estimates by proportioning the total PRA burden on institutions by the share of institutions that are small entities, as reported in

Table 10.1 (60 percent). The estimate for § 668.605 is reduced from the NPRM estimate that included burden on individuals in the calculation. The

estimate for the final includes the burden on institutions only.

³⁴¹ Available at www.bls.gov/oes/current/oes119033.htm.

TABLE 11.8—ESTIMATED HOURS FOR REPORTING REQUIREMENTS—Continued

Process	Hours	Hours basis
Review/validate test report results:		
Program-level reporting	10	Per institution.
Student-level reporting	20	Per institution.
Run reports:		
Program-level reporting	0.25	Per program.
Student-level reporting	0.5	Per program.
Review/validate report results:		
Program-level reporting	2	Per program.
Student-level reporting	5	Per program.
Certify and submit reporting	10	Per institution.

The ability to set up reports or processes that can be rerun in future years, along with the fact that the first reporting cycle includes information from several prior years, should significantly decrease the expected burden after the first reporting cycle. We estimate that the hours associated with reviewing systems, developing or

updating queries, and reviewing and validating the test queries or reports will be reduced by 35 percent after the first year. The institution would need to run and validate queries or reports to make sure no system changes have affected them and confirm there are no program changes in CIP code, credential level, preparation for licensure, accreditation,

or other items, but we expect that would be less burdensome than initially establishing the reporting. Table 11.9 presents estimates of reporting burden for small entities for the initial year and subsequent years under § 668.408 on an overall and a per institution average basis.

TABLE 11.9.1—ESTIMATED REPORTING BURDEN FOR SMALL ENTITIES FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	112	323	20,737	996,413
Proprietary 2-year	1,077	2,459	179,352	8,617,852
Public 2-year	355	4,871	184,992	8,888,878
Private 4-year	470	6,156	235,839	11,332,040
Proprietary 4-year	96	800	33,992	1,633,316
Public 4-year	39	664	24,318	1,168,492
Total	2,149	15,273	679,230	32,636,989

TABLE 11.9.2—ESTIMATED REPORTING BURDEN FOR SMALL ENTITIES FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Hours	Amount
Private 2-year	112	323	9,895	475,467
Proprietary 2-year	1,077	2,459	90,139	4,331,191
Public 2-year	355	4,871	61,180	2,939,711
Private 4-year	470	6,156	78,729	3,782,928
Proprietary 4-year	96	800	12,536	602,355
Public 4-year	39	664	7,720	370,946
Total	2,149	15,273	260,200	12,502,598

TABLE 11.9.3—ESTIMATED AVERAGE REPORTING BURDEN PER INSTITUTION FOR SMALL ENTITIES FOR THE INITIAL REPORTING CYCLE

Control and level	Institution count	Program count	Initial average hours per institution	Initial average amount per institution	As % of average revenues
Private 2-year	112	323	185	8,897	0.24
Proprietary 2-year	1,077	2,459	167	8,002	0.35
Public 2-year	355	4,871	521	25,039	0.30
Private 4-year	470	6,156	502	24,111	0.12
Proprietary 4-year	96	800	354	17,014	0.20
Public 4-year	39	664	624	29,961	0.09
Total	2,149	15,273	316	15,187	0.19

TABLE 11.9.4—ESTIMATED AVERAGE REPORTING BURDEN PER INSTITUTION FOR SMALL ENTITIES FOR SUBSEQUENT REPORTING CYCLES

Control and level	Institution count	Program count	Average hours per institution	Average amount per institution	As % of average revenues
Private 2-year	112	323	88	4,245	0.11
Proprietary 2-year	1,077	2,459	84	4,022	0.18
Public 2-year	355	4,871	172	8,281	0.10
Private 4-year	470	6,156	168	8,049	0.04
Proprietary 4-year	96	800	131	6,275	0.28
Public 4-year	39	664	198	9,511	0.03
Total	2,149	15,273	121	5,818	0.07

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described in section 10 of the Regulatory Impact Analysis above, “Alternatives Considered”, we evaluated several alternative provisions and approaches including using D/E rates only, alternative earnings thresholds, no reporting or acknowledgment requirements for non-GE programs, and several alternative ways of computing the performance metrics (smaller n-sizes and different interest rates or amortization periods). Most relevant to small entities was the alternative of using a lower n-size, which would result in larger effects on programs at small entities, both in terms of risk for loss of eligibility for GE programs and greater burden for providing warnings and/or acknowledgment. The alternative of not requiring reporting or acknowledgments in the case of failing metrics for non-GE programs would result in lower reporting burden for small institutions but was deemed to be insufficient to achieve the goal of creating greater transparency around program performance. However, for the final regulations the Department did remove the reporting obligation for programs that have fewer than thirty completers in the previous four award years, which does reduce the burden for institutions with very small programs.

The Department sought to limit the number of hours for occupationally related educational programs to the amount that States require to obtain licensure, where applicable. We believe that this change would particularly benefit students by keeping tuition costs, as well as related non-institutional expenses, lower.

12. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).³⁴² This helps so that the public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Sections 600.21, 668.43, 668.407, 668.408, and 668.605 of this final rule contain information collection requirements.

Under the PRA, the Department has or will at the required time submit a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

PRA Comments

Comments: One commenter suggested that, in calculating administrative burden, the Department should consider the administrative burden of all the proposed rules together, not individually.

Discussion: The Department took great care to analyze the impact of the

proposed regulations. The Department has separated the GE and Financial Value Transparency Framework topics from the other rules covered in the NPRM. We, therefore, updated the RIA to reflect that, as well as to reflect changes we made from the proposed rules to these final rules.

Changes: None.

Comments: Some commenters claimed the regulations will increase the cost of higher education because institutions will pass on the increased costs of reporting and data requirements to students, decreasing returns for students and potentially negatively impacting program DTE and EP outcomes.

Discussion: The Department is concerned that programs with poor outcomes continue to receive title IV, HEA funding subsidized by taxpayers. We acknowledged increases in costs to institutions in the NPRM and this final rule; however, we believe they will ultimately bring down the cost of postsecondary education by providing prospective students with the necessary resources to make an informed decision about their education. Students deserve to know whether their program will leave them in the same place or worse off if they never had attended in the first place.

We believe these rules will also protect taxpayer dollars by eliminating poor performing programs prior to the need for reactive actions like closed school discharges or borrower defense to repayment discharges. Further the public deserves access to more information and more data regarding the postsecondary institutions and programs that they are supporting through their tax dollars.

Changes: None.

Updating Application Information § 600.21.

Requirements: The change to § 600.21(a)(11)(v) and (vi), would require an institution with GE programs

³⁴² 44 U.S.C. 3506(c)(2)(A).

to update any changes in certification of those program(s).

Burden Calculations: The regulatory change would require an update to the current institutional application form, 1845–0012. The form update would be made available for comment through a full public clearance package before being made available for use by the effective dates of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

Institutional and Programmatic Information § 668.43

Requirements: Under final § 668.43(d), the Department will establish and maintain a website for posting and distributing key information pertaining to the institution’s educational programs. An institution will provide such information as the Department prescribes through a notice published in the **Federal Register** for prospective and enrolled students through the website.

This information could include, but will not be limited to, as reasonably available, the primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site; the

program’s or institution’s completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; the length of the program in calendar time; the total number of individuals enrolled in the program during the most recently completed award year; the total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; the percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV, HEA loan, a private education loan, or both; and whether the program is programmatically accredited and the name of the accrediting agency.

The institution will be required to provide a prominent link and any other needed information to access the website on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Department could require the institution to modify a web page if the information about how to access the Department’s website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

In addition, the Department will require the institution to provide the

relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

Burden Calculations: The final regulatory language in § 668.43(d) will add burden to all institutions, domestic and foreign. The changes in § 668.43(d) will require institutions to supply the Department with specific information about programs it is offering as well as provide to enrolled and prospective students this information.

We believe that this reporting activity will require an estimated 50 hours per institution. We estimate that it will take private nonprofit institutions 70,500 hours (1,410 × 50 = 70,500) to complete the required reporting activity. We estimate that it will take proprietary institutions 68,600 hours (1,372 × 50 = 68,600) to complete the required reporting activity. We estimate that it will take public institutions 86,800 hours (1,736 × 50 = 86,800) to complete the required reporting activity.

The total estimated increase in burden to OMB Control Number 1845–0022 for § 668.43 is 225,900 hours with a total rounded estimated cost of \$10,854,495.

STUDENT ASSISTANCE GENERAL PROVISIONS—OMB CONTROL NUMBER 1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost \$48.05 per institution
Private nonprofit	1,410	1,410	70,500	3,387,525.00
Proprietary	1,372	1,372	68,600	3,296,230.00
Public	1,736	1,736	86,800	4,170,740.00
Total	4,518	4,518	225,900	10,854,495.00

Student Acknowledgments § 668.407

Requirements: The final rule provides in § 668.407(a) that a student will be required to provide an acknowledgment of the D/E rate information for any year for which the Secretary notifies an institution that the program has failing D/E rates for the year in which the D/E rates were most recently calculated by the Department. This final rule excludes undergraduate degree programs from the acknowledgment requirements at § 668.407(a).

Burden Calculations: The final regulatory language in § 668.407 will add burden to institutions. The changes in § 668.407 will require institutions to develop and provide notices to prospective students that they are required to review information on the Secretary’s website and complete

acknowledge that they have viewed this information if the program to which they are applying has unacceptable D/E rates. The institution would also be obligated to check whether an individual has completed the acknowledgment before entering into an agreement to enroll the student. However, to reduce burden for institutions and students, such an acknowledgment will only be required when a student will attend a program that does not lead to an undergraduate degree and leads to high debt burden, or when a student will attend a GE program at risk of losing title IV, HEA eligibility.

In the burden calculation for § 668.407 here, we account for burden for non-GE programs. We account for all burden related to GE programs,

including where such burden comes from provisions that apply to all programs, as in 668.407, under our discussion of 668.605. We believe that most institutions will develop the notice directing impacted students to the Department’s program information website and make it available electronically to current and prospective students. We believe that this action will require an estimated 1 hour per affected program. We estimate that it would take private institutions 670 hours (670 programs × 1 hour = 670) to develop and deliver the required notice based on the information provided by the Department. We estimate that it will take public institutions 109 hours (109 programs × 1 hour = 109) to develop and deliver the required notice based on the

information provided by the Department.

The changes in § 668.407(a) will require institutions to direct prospective and students enrolled in programs that failed the D/E rates for the year in which the D/E rates were most recently

calculated by the Department to the Department's program information website. We estimate that it will take the 88,000 students 10 minutes to read the notice and go to the program information website to acknowledge receiving the information for a total of

hours (88,000 students $\times$.17 hours = 14,960).

The total estimated increase in burden to OMB Control Number 1845–0174 for § 668.407 is 15,739 hours with a total rounded estimated cost of \$370,441.

STUDENT ACKNOWLEDGMENTS—OMB CONTROL NUMBER 1845–0174

Affected entity	Respondent	Responses	Burden hours	Cost \$48.05 per institution \$22.26 per individual
Individual	88,000	88,000	14,960	\$333,010
Private nonprofit	134	670	670	32,194
Public	11	109	109	5,237
Total	88,145	88,779	15,739	370,441

Reporting Requirements § 668.408

Requirements: The final rule in subpart Q, Financial Value Transparency, adds new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to define the timeframe for institutions to report this information.

Based on projected data provided earlier in the RIA, the Department anticipates that approximately 4,518 institutions will be required to provide the data specified in § 668.408. We anticipate there will be initial estimated reporting year's burden of 5,078,259 hours total for all institutions. This estimate incorporates establishing required data routines, testing of reports and returned data, and ultimately submission of the data to the Department. It is anticipated that once these data routines and reporting mechanism are established, subsequent year estimated reporting will decrease to 1,459,603 hours total for all institutions.

Burden Calculations: The regulatory change will require an update to a Federal Student Aid data system. Once the systems for receiving and sharing the data are established, the reporting update will be made available for comment through a full information collection package with public comment periods before being made available for use on or after the effective dates of the regulations. The burden changes will be assessed to the OMB Control Number assigned to the system.

Student Warnings and Acknowledgments § 668.605

Requirements: The final rule adds a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA

eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may enter an enrollment agreement, complete registration, or disburse any title IV, HEA funds.

In addition, warnings provided to students enrolled in GE programs will include a description of the academic and financial options available to continue their education in another program at the institution in the event that the program loses eligibility, including whether the students could transfer academic credit earned in the program to another program at the institution and which course credit would transfer; an indication of whether, in the event of a loss of eligibility, the institution would continue to provide instruction in the program to allow students to complete the program, and refund the tuition, fees, and other required charges paid to the institution for enrollment in the program; and an explanation of whether, in the event that the program loses eligibility, the students could transfer credits earned in the program to another institution through an established articulation agreement or teach-out.

The institution will be required to provide alternatives to an English-language warning for current and prospective students with limited English proficiency.

Burden Calculations: The final regulatory language in § 668.605 will add burden to institutions. The changes in § 668.605 will require institutions to provide warning notices to enrolled and prospective students that a GE program has unacceptable D/E rates or an unacceptable earnings premium

measure for the year in which the D/E rates or earnings premium measure were most recently calculated by the Department along with warnings about the potential loss of title IV, HEA eligibility.

We account for all burden related to GE programs, including where such burden comes from provisions that apply to all programs, as in § 668.407, under our discussion of § 668.605. We believe that most institutions will develop the warning and make it available electronically to current and prospective students. We believe that this action will require an estimated 1 hour per affected program. We estimate that it will take private institutions 9 hours (9 programs $\times$ 1 hour = 9) to develop and deliver the required warning based on the information provided by the Department. We estimate that it will take proprietary institutions 71 hours (71 programs $\times$ 1 hour = 71) to develop and deliver the required warning based on the information provided by the Department. We estimate that it will take public institutions 2 hours (2 programs $\times$ 1 hour = 2) to develop and deliver the required warning based on the information provided by the Department.

The changes in § 668.605(d) will require institutions to provide alternatives to the English-language warning notices to enrolled and prospective students with limited English proficiency.

We estimate that it will take private institutions 72 hours (9 programs $\times$ 8 hours = 72) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it will take proprietary institutions 568 hours (71 programs $\times$ 8

hours = 568) to develop and deliver the required alternate language the required warning based on the information provided by the Department. We estimate that it will take public institutions 16 hours (2 programs × 8 hours = 16) to develop and deliver the required warning based on the information provided by the Department.

The final changes in § 668.605(e) will require institutions to provide the

warning notices to students enrolled in the GE programs with failing metrics. We estimate that it will take the 60,700 students 10 minutes to read the warning and go to the program information website to acknowledge receiving the information for a total of 10,319 hours (60,700 students × .17 hours = 10,319).

The changes in § 668.605(f) will require institutions to provide the warning notices to prospective students who express interest in the effected GE

programs. We estimate that it will take the 69,805 prospective students 10 minutes to read the warning and go to the program information website to acknowledge receiving the information for a total of 11,867 hours (69,805 students × .17 hours = 11,867).

The total estimated increase in burden to OMB Control Number 1845–0173 for § 668.605 is 22,924 hours with a total rounded estimated cost of \$529,322.

GE STUDENT WARNINGS AND ACKNOWLEDGMENTS—OMB CONTROL NUMBER 1845–0173

Affected entity	Respondent	Responses	Burden hours	Cost \$48.05 per institution \$22.26 per individual
Individual	130,505	130,505	22,186	\$493,860
Private nonprofit	9	18	81	3,893
Proprietary	71	142	639	30,704
Public	2	4	18	865
Total	130,587	130,669	22,924	529,322

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the

information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, which is \$22.26 per hour according to BLS (www.bls.gov/

oes/current/oes_nat.htm#00-0000). For institutions we have used the median hourly wage for Education Administrators, Postsecondary, which is \$48.05 per hour according to BLS (www.bls.gov/oes/current/oes119033.htm).

Regulatory section	Information collection	OMB control number and estimated burden	Estimated costs— \$48.05 institutional \$22.26 individual unless otherwise noted
§ 668.43	Amend § 668.43 to establish a website for the posting and distribution of key information pertaining to the institution's educational programs, and to require institutions to provide information about how to access that website to a prospective student before the student enrolls, registers, or makes a financial commitment to the institution.	1845–0022 +225,900 hrs	\$+10,854,495.
§ 668.407	Add a new § 668.407 to require current and prospective students to acknowledge having seen the information on the program information website maintained by the Secretary if an eligible program has failed the D/E rates measure, to specify the content and delivery of such acknowledgments, and to require that students must provide the acknowledgment before the institution enters an enrollment agreement.	1845–0174 +15,739	\$+370,441.
§ 668.408	Add a new § 668.408 to establish institutional reporting requirements for students who enroll in, complete, or withdraw from a GE program or eligible non-GE program and to establish the reporting timeframe.	Burden will be cleared at a later date through a separate information collection.	Costs will be cleared through separate information collection.
§ 668.605	Add a new § 668.605 to require warnings to current and prospective students if a GE program is at risk of losing title IV, HEA eligibility, to specify the content and delivery parameters of such notifications, and to require that students must acknowledge having seen the warning before the institution may enter an enrollment agreement, complete registration, or disburse any title IV, HEA funds.	1845–0173 +22,924	\$+529,322.

The total burden hours and change in burden hours associated with each OMB

Control number affected by the final

regulations follows: 1845–0022, 1845–0173, 1845–0174.

Control No.	Total burden hours	Change in burden hours
1845–0022	2,514,148	+225,900
1845–0173	15,739	+15,739
1845–0174	22,924	+22,924
Total	2,552,811	264,563

If you want to comment on the final information collection requirements, please send your comments to the Office of Information and Regulatory Affairs in OMB, Attention: Desk Officer for the U.S. Department of Education. Send these comments by email to OIRA-DOCKET@omb.eop.gov or by fax to (202)395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of the preamble.

We have prepared the Information Collection Request (ICR) for these collections. You may review the ICR which is available at www.reginfo.gov. Click on Information Collection Review. These collections are identified as collections 1845–0022, 1845–0173, and 1845–0174.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

13. Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. “Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The final regulations do not have federalism implications.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text

Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel A. Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10 is amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(3) For a gainful employment program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the eligibility of the program, an eligible institution must update its application under § 600.21.

* * * * *

■ 3. Section 600.21 is amended by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(11)(iv), removing the word “or”.

■ c. Revising paragraph (a)(11)(v).

■ d. Adding paragraph (a)(11)(vi).

The revisions and addition read as follows:

§ 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary, in a manner prescribed by the Secretary and no later than 10 days after the change occurs, any change in the following:

* * * * *

(11) * * *

(v) Changing the program’s name, classification of instructional program (CIP) code, or credential level; or

(vi) Updating the certification pursuant to 34 CFR 668.604(b).

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and 5 U.S.C. 404.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and 5 U.S.C. 404.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

■ 5. Section 668.2 is amended by adding to paragraph (b), in alphabetical order, definitions of “Annual debt-to-earnings rate (annual D/E rate),” “Classification of instructional program (CIP) code,” “Cohort period,” “Credential level,” “Debt-to-earnings rates (D/E rates),” “Discretionary debt-to-earnings rate (discretionary D/E rate),” “Earnings premium,” “Earnings threshold,” “Eligible non-GE program,” “Federal agency with earnings data,” “Gainful employment program (GE program),” “Institutional grants and scholarships,” “Length of the program,” “Metropolitan statistical area,” “Poverty Guideline,” “Prospective student,” “Qualifying graduate program,” “Student,” and “Substantially similar program” to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Annual debt-to-earnings rate (annual D/E rate): The ratio of a program’s annual loan payment amount to the annual earnings of the students who completed the program, expressed as a percentage, as calculated under § 668.403.

* * * * *

Classification of instructional program (CIP) code: A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education’s National Center for Education Statistics (NCES). Specific programs offered by institutions are classified using a six-digit CIP code.

Cohort period: The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate debt-to-earnings rates and the earnings premium measure under subpart Q of this part. The Secretary uses a 2-year cohort period to calculate the debt-to-earnings rates and earnings premium measure for a program when the number of students (after exclusions identified in §§ 668.403(e) and

668.404(c)) in the 2-year cohort period is 30 or more. The Secretary uses a 4-year cohort period to calculate the debt-to-earnings rates and earnings premium measure when the number of students completing the program in the two-year cohort period is fewer than 30 and when the number of students completing the program in the 4-year cohort period is 30 or more. The cohort period covers consecutive award years that are—

(1) For the 2-year cohort period—

(i) The third and fourth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a qualifying graduate program, the sixth and seventh award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated.

(2) For the four-year cohort period—

(i) The third, fourth, fifth, and sixth award years prior to the year for which the most recent data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated, pursuant to §§ 668.403 and 668.404; or

(ii) For a qualifying graduate program, the sixth, seventh, eighth, and ninth award years prior to the year for which the most recent earnings data are available from the Federal agency with earnings data at the time the D/E rates and earnings premium measure are calculated.

Credential level: The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this part, the undergraduate credential levels are: undergraduate certificate or diploma, associate degree, bachelor’s degree, and post-baccalaureate certificate; and the graduate credential levels are master’s degree, doctoral degree, first-professional degree (e.g., MD, DDS, JD), and graduate certificate (including a postgraduate certificate).

Debt-to-earnings rates (D/E rates): The discretionary debt-to-earnings rate and annual debt-to-earnings rate as calculated under § 668.403.

* * * * *

Discretionary debt-to-earnings rate (discretionary D/E rate): The percentage of a program’s annual loan payment compared to the discretionary earnings of the students who completed the program, as calculated under § 668.403.

Earnings premium: The amount by which the median annual earnings of

students who recently completed a program exceed the earnings threshold, as calculated under § 668.404. If the median annual earnings of recent completers is equal to the earnings threshold, the earnings premium is zero. If the median annual earnings of recent completers is less than the earnings threshold, the earnings premium is negative.

Earnings threshold: Based on data from the Census Bureau, the median earnings for working adults aged 25–34, who either worked during the year or indicated they were unemployed (i.e., not employed but looking for and available to work) when interviewed, with only a high school diploma (or recognized equivalent)—

(1) In the State in which the institution is located; or

(2) Nationally, if fewer than 50 percent of the students in the program are from the State where the institution is located, or if the institution is a foreign institution.

Eligible non-GE program: An educational program other than a gainful employment (GE) program offered by an institution and included in the institution’s participation in the title IV, HEA programs, identified by a combination of the institution’s six-digit Office of Postsecondary Education ID (OPEID) number, the program’s six-digit CIP code as assigned by the institution or determined by the Secretary, and the program’s credential level. Includes all coursework associated with the program’s credential level.

* * * * *

Federal agency with earnings data: A Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates and earnings threshold measure. The agency must have individual earnings data sufficient to match with title IV, HEA recipients who completed any eligible program during the cohort period and may include agencies such as the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and the Census Bureau.

* * * * *

Gainful employment program (GE program): An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution’s six-digit OPEID number, the program’s six-digit CIP code as assigned by the institution or determined by the Secretary, and the program’s credential level.

* * * * *

Institutional grants and scholarships: Assistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver.

* * * * *

Length of the program: The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

* * * * *

Metropolitan statistical area: A core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

* * * * *

Poverty Guideline: The Poverty Guideline for a single person in the continental United States, as published by the U.S. Department of Health and Human Services and available at <https://aspe.hhs.gov/poverty> or its successor site.

* * * * *

Prospective student: An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

Qualifying graduate program: (1) For the first three award years that the Secretary calculates debt-to-earnings rates and the earnings premium measure under subpart Q of this part ("initial period"), a graduate program—

(i) Whose students must complete required postgraduation training programs to obtain licensure in one of the following fields: medicine, osteopathy, dentistry, clinical psychology, marriage and family counseling, clinical social work, and clinical counseling; and

(ii) For which the institution attests, in the manner established by the Secretary, that—

(A) If necessary for licensure, the program is accredited by an accrediting agency that meets State requirements; and

(B) At least half of the program's graduates obtain licensure in a State where the postgraduation training requirements apply.

(2)(i) After the initial period, the graduate programs that are on the list described in paragraph (2)(ii) of this definition and for which the Secretary has received an attestation that meets the requirements in paragraph (1)(ii) of this definition.

(ii) For the first award year following the initial period, and every three years thereafter, using publicly available information and information received in response to a request for information, the Secretary publishes in the **Federal Register** a list of graduate degree fields (based on their credential level and CIP codes) that may contain qualifying graduate programs by identifying fields—

(A) That lead to a graduate (master's, first-professional, or doctoral) degree;

(B) For which the Department determines that graduates must complete a required postgraduate training program that takes, on average, three or more years to complete; and

(C) For which, based on College Scorecard data, the Secretary determines that a majority of programs with the same credential level and CIP code have outlier earnings growth. An individual program has outlier earnings growth if the percent change in median earnings between its earnings measured one or three years post-completion and its earnings measured either five or ten years post-completion is more than two standard deviations above the average earnings growth for other programs with the same credential level.

(3) For the purpose of this definition, a "required postgraduation training program" is a supervised training program that—

(i) Requires the student to hold a degree in one of the listed fields in paragraph (1)(i) of this definition or one of the fields identified in the list described in paragraph (2)(ii) of this definition; and

(ii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

* * * * *

Student: For the purposes of subparts Q and S of this part and of § 668.43(d), an individual who received title IV, HEA program funds for enrolling in the program.

* * * * *

Substantially similar program: For the purposes of subpart Q and S of this part, a program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-

digit CIP codes, but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program with its certification under § 668.604.

* * * * *

■ 6. Section 668.43 is amended by:

■ a. Revising the section heading.

■ b. Adding paragraph (d).

The revisions and addition read as follows:

§ 668.43 Institutional and programmatic information.

* * * * *

(d)(1) **Program information website.**

Beginning on July 1, 2026, the Secretary will establish and maintain a website with information about institutions and their educational programs. For this purpose, an institution must provide to the Department such information about the institution and its programs as the Secretary prescribes through a notice published in the **Federal Register**. The Secretary may conduct consumer testing to inform the design of the website.

(i) The website must include, but is not limited to, the following items, to the extent reasonably available:

(A) The published length of the program in calendar time (*i.e.*, weeks, months, years).

(B) The total number of individuals enrolled in the program during the most recently completed award year.

(C) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the published length of the program.

(D) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a Direct Loan Program loan, a private loan, or both for enrollment in the program.

(E) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(F) As provided by the Secretary, the median earnings of students who completed the program or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(G) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(H) As calculated by the Secretary, the program's debt-to-earnings rates.

(I) As calculated by the Secretary, the program's earnings premium measure.

(ii) The website may also include other information deemed appropriate by the Secretary, such as the following items:

(A) The primary occupations (by name, SOC code, or both) that the program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site.

(B) As reported to or calculated by the Secretary, the program or institution's completion rates and withdrawal rates for full-time and less-than-full-time students.

(C) As calculated by the Secretary, the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment, and the total net cost of attendance paid by students completing the program.

(D) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on Direct Loan Program loans during a period determined by the Secretary.

(E) Whether students who graduate from a program are required to complete postgraduation training program to obtain licensure before eligible for independent practice.

(2) *Program web pages.* The institution must provide a prominent link to, and any other needed information to access, the website maintained by the Secretary on any web page containing academic, cost, financial aid, or admissions information about the program or institution. The Secretary may require the institution to modify a web page if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

(3) *Distribution to prospective students.* The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

(4) *Distribution to enrolled students.* The institution must provide the relevant information to access the website maintained by the Secretary to any enrolled title IV, HEA recipient prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.

* * * * *

■ 7. Section 668.91 is amended by:

■ a. In paragraph (a)(3)(v)(B)(2), removing the period at the end of the paragraph and adding, in its place, “; and”.

■ b. Adding paragraph (a)(3)(vi).

The addition reads as follows:

§ 668.91 Initial and final decisions.

(a) * * *

(3) * * *

(vi) In a termination action against a GE program based upon the program's failure to meet the requirements in § 668.403 or § 668.404, the hearing official must terminate the program's eligibility unless the hearing official concludes that the Secretary erred in the applicable calculation.

* * * * *

■ 8. Add subpart Q to read as follows:

Subpart Q—Financial Value Transparency

Sec.

668.401 Financial value transparency scope and purpose.

668.402 Financial value transparency framework.

668.403 Calculating D/E rates.

668.404 Calculating earnings premium measure.

668.405 Process for obtaining data and calculating D/E rates and earnings premium measure.

668.406 Determination of the D/E rates and earnings premium measure.

668.407 Student acknowledgments.

668.408 Reporting requirements.

668.409 Severability.

Subpart Q—Financial Value Transparency

§ 668.401 Financial value transparency scope and purpose.

(a) *General.* Except as provided under paragraph (b) of this section, this subpart applies to a GE program or eligible non-GE program offered by an eligible institution, and establishes the rules and procedures under which—

(1) An institution reports information about the program to the Secretary; and

(2) Except as provided in paragraph (b)(1) of this section, the Secretary assesses the program's debt and earnings outcomes.

(b) *Applicability.* (1) This subpart does not apply to institutions located in U.S. Territories or freely associated states, except that such institutions are subject to the reporting requirements in § 668.408 and the Secretary will follow the procedures in §§ 668.403(b) and (d) and 668.405(b) and (c) to calculate median debt and obtain earnings information for their GE programs and eligible non-GE programs.

(2) For each award year that the Secretary calculates D/E rates or the earnings premium measure under § 668.402, this subpart does not apply to an institution if, over the most recently completed four award years, it offered no groups of substantially similar programs, defined as all programs in the

same four-digit CIP code at an institution, with 30 or more completers.

§ 668.402 Financial value transparency framework.

(a) *General.* The Secretary assesses the program's debt and earnings outcomes using debt-to-earnings rates (D/E rates) and an earnings premium measure.

(b) *Debt-to-earnings rates.* The Secretary calculates for each award year two D/E rates for an eligible program, the discretionary debt-to-earnings rate, and the annual debt-to-earnings rate, using the procedures in §§ 668.403 and 668.405.

(c) *Outcomes of the D/E rates.* (1) A program passes the D/E rates if—

(i) Its discretionary debt-to-earnings rate is less than or equal to 20 percent;

(ii) Its annual debt-to-earnings rate is less than or equal to 8 percent; or

(iii) The denominator (median annual or discretionary earnings) of either rate is zero and the numerator (median debt payments) is zero.

(2) A program fails the D/E rates if—

(i) Its discretionary debt-to-earnings rate is greater than 20 percent or the income for the denominator of the rate (median discretionary earnings) is negative or zero and the numerator (median debt payments) is positive; and

(ii) Its annual debt-to-earnings rate is greater than 8 percent or the denominator of the rate (median annual earnings) is zero and the numerator (median debt payments) is positive.

(d) *Earnings premium measure.* For each award year, the Secretary calculates the earnings premium measure for an eligible program, using the procedures in §§ 668.404 and 668.405.

(e) *Outcomes of the earnings premium measure.* (1) A program passes the earnings premium measure if the median annual earnings of the students who completed the program exceed the earnings threshold.

(2) A program fails the earnings premium measure if the median annual earnings of the students who completed the program are equal to or less than the earnings threshold.

§ 668.403 Calculating D/E rates.

(a) *General.* Except as provided under paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a program as follows:

(1) Discretionary debt-to-earnings rate = annual loan payment/(the median annual earnings—(1.5 x Poverty Guideline)). For the purposes of this paragraph (a)(1), the Secretary applies the Poverty Guideline for the most recent calendar year for which annual

earnings are obtained under paragraph (c) of this section.

(2) Annual debt-to-earnings rate = annual loan payment/the median annual earnings.

(b) *Annual loan payment.* The Secretary calculates the annual loan payment for a program by—

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d) of this section or the total amount for tuition and fees and books, equipment, and supplies for each student, less the amount of institutional grant or scholarship funds provided to that student;

(ii) Removing, if applicable, the appropriate number of largest loan debts as described in § 668.405(d)(2); and

(iii) Calculating the median of the remaining amounts; and

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for any other program; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three consecutive award years, ending in the final year of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three consecutive award years, ending in the final year of the cohort period, for graduate certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six consecutive award years, ending in the final year of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six consecutive award years, ending in the final year of the cohort period, for doctoral programs and first professional degree programs. For these

programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

(c) *Annual earnings.* (1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the median annual earnings to calculate the D/E rates.

(d) *Loan debt and assessed charges.*

(1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of Direct Loans that the student borrowed (total amount disbursed less any cancellations or adjustments except for those related to false certification, borrower defense discharges, or categorical debt relief initiated under the Secretary's statutory authority) for enrollment in the program, excluding Direct PLUS Loans made to parents of dependent students and Direct Unsubsidized Loans that were converted from TEACH Grants;

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that are required to be reported by the institution under § 668.408; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any program attended at the institution that the student is obligated to repay after completing the program, including extensions of credit described in paragraphs (1) and (2) of the definition of, and excluded from, the term "private education loan" in 34 CFR 601.2;

(2) The Secretary attributes all the loan debt incurred by the student for enrollment in any—

(i) Undergraduate program at the institution to the highest credentialed undergraduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(ii) Graduate program at the institution to the highest credentialed graduate program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in any program at any other institution. However, the Secretary may include loan debt incurred by the student for enrollment in programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's Direct Loan Program loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(f) *D/E rates not issued.* The Secretary does not issue D/E rates for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (c) of this section.

§ 668.404 Calculating earnings premium measure.

(a) *General.* Except as provided under paragraph (d) of this section, for each award year, the Secretary calculates the

earnings premium measure for a program by determining whether the median annual earnings of the students who completed the program exceed the earnings threshold.

(b) *Median annual earnings; earnings threshold.* (1) The Secretary obtains from a Federal agency with earnings data, under § 668.405, the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded under paragraph (c) of this section; and

(2) The Secretary uses the median annual earnings of students with a high school diploma or GED using data from the Census Bureau to calculate the earnings threshold described in § 668.2.

(3) The Secretary determines the earnings thresholds and publishes the thresholds annually through a notice in the **Federal Register**.

(c) *Exclusions.* The Secretary excludes a student from the earnings premium measure calculation if the Secretary determines that—

(1) One or more of the student's Direct Loan Program loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full-time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (b)(1) of this section;

(3) For undergraduate programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(4) For graduate programs, the student completed a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure under this section;

(5) The student is enrolled in an approved prison education program;

(6) The student is enrolled in a comprehensive transition and postsecondary program; or

(7) The student died.

(d) *Earnings premium measures not issued.* The Secretary does not issue the earnings premium measure for a program under § 668.406 if—

(1) After applying the exclusions in paragraph (c) of this section, fewer than 30 students completed the program

during the two-year or four-year cohort period; or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (b) of this section.

§ 668.405 Process for obtaining data and calculating D/E rates and earnings premium measure.

(a) *Administrative data.* In calculating the D/E rates and earnings premium measure for a program, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) *Process overview.* The Secretary uses the administrative data to—

(1) Compile a list of students who completed each program during the cohort period. The Secretary—

(i) Removes from those lists students who are excluded under § 668.403(e) or § 668.404(c);

(ii) Provides the list to institutions; and

(iii) Allows the institution to correct the information reported by the institution on which the list was based, no later than 60 days after the date the Secretary provides the list to the institution;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the D/E rates and the earnings premium measure and provide them to the institution.

(c) *Obtaining earnings data.* For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary—

(1) The median annual earnings of the students on the list whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match.

(d) *Calculating D/E rates and earnings premium measure.* (1) If the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates and earnings premium measure for each program.

(2) If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt for D/E rates the same number of students with the highest loan debts as the number of students whose earnings the Federal agency with earnings data did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

§ 668.406 Determination of the D/E rates and earnings premium measure.

(a) For each award year for which the Secretary calculates D/E rates and the earnings premium measure for a program, the Secretary issues a notice of determination.

(b) The notice of determination informs the institution of the following:

(1) The D/E rates for each program as determined under § 668.403.

(2) The earnings premium measure for each program as determined under § 668.404.

(3) The determination by the Secretary of whether each program is passing or failing, as described in § 668.402, and the consequences of that determination.

(4) Whether the student acknowledgment is required under § 668.407.

(5) For GE programs, whether the institution is required to provide the student warning under § 668.605.

(6) For GE programs, whether the program could become ineligible under subpart S of this part based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the program.

§ 668.407 Student acknowledgments.

(a) Beginning on July 1, 2026, if an eligible program, other than an undergraduate degree program, has failing D/E rates, the Secretary notifies the institution under § 668.406(b)(4) that student acknowledgments are required for such program in the manner specified in this section.

(b)(1) If student acknowledgements are required, prospective students must acknowledge that they have viewed the information provided through the program information website established and maintained by the Secretary described in § 668.43(d).

(2) The Department will administer and collect the acknowledgment from

students through the program information website.

(3) Prospective students must provide such acknowledgments until:

(i) The Secretary notifies the institution pursuant to § 668.406 that the program has passing D/E rates; or

(ii) Three years after the institution was last notified that the program had failing D/E rates, whichever is earlier.

(c)(1) A prospective student must provide the acknowledgment before the institution enters into an agreement to enroll the student.

(2) The Secretary monitors the institution's compliance with the requirements in paragraph (c)(1) of this section through audits, program reviews, or other investigations.

(d) The acknowledgment required in paragraph (c)(1) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive evidence against a student's claim if applying for a loan discharge.

§ 668.408 Reporting requirements.

(a) *Data elements.* In accordance with procedures established by the Secretary, an institution offering any group of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers in total over the four most recent award years must report to the Department—

(1) For each GE program and eligible non-GE program, for its most recently completed award year—

(i) The name, CIP code, credential level, and length of the program;

(ii) Whether the program is programmatically accredited and, if so, the name of the accrediting agency;

(iii) Whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each State in the institution's metropolitan statistical area;

(iv) The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of title IV, HEA funds; and

(v) Whether the program is a qualifying graduate program whose students are required to complete postgraduate training programs, as described in the definition under § 668.2;

(2) For each student—

(i) Information needed to identify the student and the institution;

(ii) The date the student initially enrolled in the program;

(iii) The student's attendance dates and attendance status (e.g., enrolled,

withdrawn, or completed) in the program during the award year;

(iv) The student's enrollment status (e.g., full time, three-quarter time, half time, less than half time) as of the first day of the student's enrollment in the program;

(v) The student's total annual cost of attendance (COA);

(vi) The total tuition and fees assessed to the student for the award year;

(vii) The student's residency tuition status by State or district;

(viii) The student's total annual allowance for books, supplies, and equipment from their COA under HEA section 472;

(ix) The student's total annual allowance for housing and food from their COA under HEA section 472;

(x) The amount of institutional grants and scholarships disbursed to the student;

(xi) The amount of other State, Tribal, or private grants disbursed to the student; and

(xii) The amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;

(3) If the student completed or withdrew from the program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution for such expenses; and

(vi) The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program; and

(4) As described in a notice published by the Secretary in the **Federal Register**, any other information the Secretary requires the institution to report.

(b) *Initial and annual reporting.* (1) Except as provided under paragraph (c)

of this section, an institution must report the information required under paragraph (a) of this section no later than—

(i) For programs other than qualifying graduate programs, July 31, following July 1, 2024, for the second through seventh award years prior to July 1, 2024;

(ii) For qualifying graduate programs, July 31, following July 1, 2024, for the second through eighth award years prior to July 1, 2024; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the **Federal Register**.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(c) *Transitional reporting period and metrics.* (1) For the first six years for which D/E rates and the earnings premium are calculated under this part, institutions may opt to report the information required under paragraph (a) of this section for its eligible programs either—

(i) For the time periods described in paragraphs (b)(1)(i) and (ii) of this section; or

(ii) For only the two most recently completed award years.

(2) If an institution provides transitional reporting under paragraph (c)(1)(ii) of this section, the Department will calculate transitional D/E rates and earnings premium measures using the median debt for the period reported and the earnings for six years.

§ 668.409 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of this part and subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

■ 9. Add subpart S to read as follows:

Subpart S—Gainful Employment (GE)

Sec.

668.601 Gainful employment (GE) scope and purpose.

668.602 Gainful employment criteria.

668.603 Ineligible GE programs.

668.604 Certification requirements for GE programs.

668.605 Student warnings.

668.606 Severability.

Subpart S—Gainful Employment (GE)**§ 668.601 Gainful employment (GE) scope and purpose.**

(a) *General.* Except as provided under paragraph (b) of this section, this subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation and establishes rules and procedures under which the Secretary determines that the program is eligible for title IV, HEA program funds.

(b) *Applicability.* (1) This subpart does not apply to programs offered by institutions located in U.S. Territories or freely associated states.

(2) For each award year that the Secretary calculates D/E rates or the earnings premium measure under § 668.402, this subpart does not apply to an institution if, over the most recently completed four award years, it offered no groups of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers in total.

§ 668.602 Gainful employment criteria.

(a) A GE program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in § 668.604;

(2) Is not a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program's D/E rates are calculated; and

(3) Is not a failing program under the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated.

(b) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates for that award year and remains in the same status under the D/E rates as the previous award year.

(c) In determining a program's eligibility, the Secretary disregards any D/E rates that were calculated more than five calculation years prior.

(d) If the Secretary does not calculate or issue earnings premium measures for a program for an award year, the program receives no result under the earnings premium measure for that award year and remains in the same status under the earnings premium measure as the previous award year.

(e) In determining a program's eligibility, the Secretary disregards any

earnings premium that was calculated more than five years prior.

§ 668.603 Ineligible GE programs.

(a) *Ineligible programs.* If a GE program is a failing program under the D/E rates measure in § 668.402 in two out of any three consecutive award years for which the program's D/E rates are calculated, or the earnings premium measure in § 668.402 in two out of any three consecutive award years for which the program's earnings premium measure is calculated, the program is ineligible and its participation in the title IV, HEA programs ends upon the earliest of—

(1) The issuance of a new Eligibility and Certification Approval Report that does not include that program;

(2) The completion of a termination action of program eligibility, if an action is initiated under subpart G of this part; or

(3) A revocation of program eligibility if the institution is provisionally certified.

(b) *Basis for appeal.* If the Secretary initiates an action under paragraph (a)(2) of this section, the institution may initiate an appeal under subpart G of this part if it believes the Secretary erred in the calculation of the program's D/E rates under § 668.403 or the earnings premium measure under § 668.404. Institutions may not dispute a program's ineligibility based upon its D/E rates or the earnings premium measure except as described in this paragraph (b).

(c) *Restrictions—*(1) *Ineligible program.* Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after D/E rates or the earnings premium measure are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates or the earnings premium measure, until three years following the earlier of the date the program loses eligibility under paragraph (a) of this section or the date the institution voluntarily discontinued the failing program.

(3) *Restoring eligibility.* An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.604(c).

§ 668.604 Certification requirements for GE programs.

(a) *Transitional certification for existing programs.* (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31, 2024, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under § 668.14.

(2) If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31, 2024, it is not required to provide the transitional certification under this paragraph (a).

(b) *Program participation agreement certification.*

As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. As provided under 34 CFR 600.21(a)(11)(vi), an institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes a GE program's eligibility for title IV, HEA program funds by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in § 668.603(c), that was

subject to the three-year loss of eligibility under § 668.603(c), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies for each eligible GE program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that such program is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

§ 668.605 Student warnings.

(a) *Events requiring a warning to students and prospective students.* Beginning on July 1, 2026, the institution must provide a warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the GE program could become ineligible under this subpart based on its final D/E rates or earnings premium measure for the next award year for which D/E rates or the earnings premium measure are calculated for the GE program.

(b) *Subsequent warning.* If a student or prospective student receives a warning under paragraph (a) of this section with respect to a GE program, but does not seek to enroll until more than 12 months after receiving the warning, the institution must again provide the warning to the student or prospective student, unless, since providing the initial warning, the program has passed both the D/E rates and earnings premium measures for the two most recent consecutive award years in which the metrics were calculated for the program.

(c) *Content of warning.* The institution must provide in the warning—

(1) A warning, as specified by the Secretary in a notice published in the **Federal Register**, that—

(i) The program has not passed standards established by the U.S. Department of Education based on the amounts students borrow for enrollment in the program and their reported earnings, as applicable; and

(ii) The program could lose access to Federal grants and loans based on the next calculated program metrics;

(2) The relevant information to access the program information website maintained by the Secretary described in § 668.43(d);

(3) A statement that the student must acknowledge having viewed the warning through the program information website before the institution may disburse any title IV, HEA funds to the student;

(4) A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(5) An indication of whether, in the event that the program loses eligibility for title IV, HEA program funds, the institution will—

(i) Continue to provide instruction in the program to allow students to complete the program; and

(ii) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(6) An explanation of whether, if the program loses eligibility for title IV, HEA program funds, the students could transfer credits earned in the program to another institution in accordance with an established articulation agreement or teach-out plan or agreement.

(d) *Alternative languages.* In addition to providing the English-language warning, the institution must also provide translations of the English-language student warning for those students and prospective students who have limited proficiency in English.

(e) *Delivery to enrolled students.* An institution must provide the warning required under this section in writing, by hand delivery, mail, or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.406 and maintain documentation of its efforts to provide that warning. The warning must be the only substantive content contained in these written communications.

(f) *Delivery to prospective students.*

(1) An institution must provide the warning as required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact

about the program between the institution and the student or the third party acting on behalf of the student by—

(i) Hand-delivering the warning as a separate document to the prospective student or third party, individually or as part of a group presentation;

(ii) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(iii) Providing the warning orally to the student or third party if the contact is by telephone.

(2) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the institution delivers the warning as described in this paragraph (f).

(g) *Acknowledgment prior to enrollment and disbursement.* An institution may not allow a prospective student seeking title IV, HEA assistance to sign an enrollment agreement, complete registration, or make a financial commitment to the institution, or disburse title IV, HEA funds to the student until the student or prospective student completes the acknowledgment described in paragraph (c)(3) of this section.

(h) *Discharge claims.* The provision of a student warning or the acknowledgment described in paragraph (c)(3) of this section does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive evidence against a student's claim if applying for a loan discharge.

§ 668.606 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of this part and subpart, and the application of this subpart's provisions to any other person, act, or practice, will not be affected thereby.

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Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for
Commercial Refrigerators, Freezers, and Refrigerator-Freezers; Proposed
Rule

DEPARTMENT OF ENERGY**10 CFR Part 431****[EERE–2017–BT–STD–0007]****RIN 1904–AD82****Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer equipment and certain commercial and industrial equipment, including commercial refrigerators, freezers, and refrigerator-freezers (“commercial refrigeration equipment” or “CRE”). EPCA also requires the U.S. Department of Energy (“DOE” “the Department”) to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (“NOPR”), DOE proposes new and amended energy conservation standards for CRE, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than December 11, 2023.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before November 9, 2023.

Meeting: DOE will hold a public meeting on Tuesday, November 7th, 2023, from 10 a.m. to 4 p.m., in Washington, DC. This meeting will also be broadcast as a webinar.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue SW, Washington, DC 20585. See section VII of this document, “Public Participation,” for further details, including procedures for attending the in-person meeting, webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Interested persons are encouraged to submit comments using the Federal Rulemaking Portal at www.regulations.gov under docket number EERE–2017–BT–STD–0007. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0007, by any of the following methods:

(1) *Email:* CRE2017STD0007@ee.doe.gov. Include the docket number EERE–2017–BT–STD–0007 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2017-BT-STD-0007. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through www.regulations.gov.

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standards. Interested persons

may contact the Division at energy.standards@usdoj.gov on or before the date specified in the **DATES** section. Please indicate in the “Subject” line of your email the title and Docket Number of this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: Kristin.Koernig@hq.doe.gov.

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I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94-163, as amended ("EPCA"),¹ authorizes DOE to regulate

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (December 27, 2020), which reflect the last statutory amendments that impact parts A and A-1 of EPCA.

the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291-6317) Title III, part C of EPCA established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311-6317) Such equipment includes CRE, the subject of this proposed rulemaking.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B))

EPCA established standards for certain categories of CRE (42 U.S.C. 6313(c)(2)-(4)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)(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 equipment 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. 6316(e)(1); 42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE analyzed the benefits and burdens of six trial standard levels ("TSLs") for CRE. The TSLs and their associated benefits and burdens are discussed in detail in sections V.A through V.C of this document. As discussed in section V.C, DOE has tentatively determined that TSL 5 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified and to establish new energy conservation standards for covered equipment not yet subject to energy conservation standards. The proposed standards, which are expressed in maximum daily energy consumption ("MDEC"), are shown in table I.1. These proposed standards, if adopted, would apply to all CRE listed in table I.1 manufactured in, or imported into, the United States on or after the date that is (1) 3 years after the date on which the final new and amended standards are published or (2) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final

rule is published. (42 U.S.C. 6313(c)(6)(C)).

DOE notes that the U.S. Environmental Protection Agency (“EPA”) proposed refrigerant restrictions pursuant to the American Innovation and Manufacturing Act (“AIM Act”)² affecting CRE in a NOPR published on December 15, 2022 (“December 2022 EPA NOPR”). 87 FR 76738. The proposal would prohibit manufacture or import of such CRE starting January 1, 2025, and would ban sale, distribution, purchase, receipt, or export of such CRE starting January 1, 2026. *Id.* at 87 FR 76809. See section IV.C.1.a of this document for more details. DOE understands that it would be beneficial to CRE equipment manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR. Therefore, DOE is proposing that the proposed standards, if adopted, would apply to all CRE listed in table I.1 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final new and amended standards are published.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE

Equipment class	Maximum daily energy consumption (kWh/day)
VOP.RC.H	$0.31 \times \text{TDA} + 1.99$
VOP.RC.M	$0.56 \times \text{TDA} + 3.57$
VOP.RC.L	$2.04 \times \text{TDA} + 6.36$
VOP.RC.I	$2.59 \times \text{TDA} + 8.08$
SVO.RC.H	$0.32 \times \text{TDA} + 1.55$
SVO.RC.M	$0.58 \times \text{TDA} + 2.79$
SVO.RC.L	$2.04 \times \text{TDA} + 6.36$
SVO.RC.I	$2.59 \times \text{TDA} + 8.08$
HZO.RC.H	$0.19 \times \text{TDA} + 1.56$
HZO.RC.M	$0.34 \times \text{TDA} + 2.81$
HZO.RC.L	$0.54 \times \text{TDA} + 6.81$
HZO.RC.I	$0.69 \times \text{TDA} + 8.64$
VCT.RC.H	$0.07 \times \text{TDA} + 0.97$
VCT.RC.M	$0.134 \times \text{TDA} + 1.74$
VCT.RC.L	$0.47 \times \text{TDA} + 2.51$
VCT.RC.I	$0.56 \times \text{TDA} + 2.97$
HCT.RC.M	$0.16 \times \text{TDA} + 0.13$
HCT.RC.L	$0.34 \times \text{TDA} + 0.26$
HCT.RC.I	$0.38 \times \text{TDA} + 0.29$
VCS.RC.H	$0.06 \times \text{V} + 0.14$
VCS.RC.M	$0.1 \times \text{V} + 0.26$
VCS.RC.L	$0.21 \times \text{V} + 0.54$
VCS.RC.I	$0.25 \times \text{V} + 0.63$
HCS.RC.M	$0.1 \times \text{V} + 0.26$
HCS.RC.L	$0.21 \times \text{V} + 0.54$
HCS.RC.I	$0.25 \times \text{V} + 0.63$
SOC.RC.H	$0.22 \times \text{TDA} + 0.05$

² Under subsection (i) of the AIM Act, entitled “Technology Transitions,” the EPA may by rule restrict the use of hydrofluorocarbons (“HFCs”) in sectors or subsectors where they are used. A person or entity may also petition EPA to promulgate such a rule. “H.R.133—116th Congress (2019–2020): Consolidated Appropriations Act, 2021.” *Congress.gov*, Library of Congress, December 27,

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE—Continued

Equipment class	Maximum daily energy consumption (kWh/day)
SOC.RC.M	$0.39 \times \text{TDA} + 0.1$
SOC.RC.L	$0.83 \times \text{TDA} + 0.2$
SOC.RC.I	$1.04 \times \text{TDA} + 0.25$
CB.RC.M	$0.03 \times \text{V} + 0.39$
CB.RC.L	$0.13 \times \text{V} + 1.37$
VOP.SC.H	$0.69 \times \text{TDA} + 1.94$
VOP.SC.M	$1.25 \times \text{TDA} + 3.48$
VOP.SC.L	$3.29 \times \text{TDA} + 9.15$
VOP.SC.I	$4.18 \times \text{TDA} + 11.63$
SVO.SC.H	$0.65 \times \text{TDA} + 1.77$
SVO.SC.M	$1.18 \times \text{TDA} + 3.18$
SVO.SC.L	$3.25 \times \text{TDA} + 8.78$
SVO.SC.I	$4.13 \times \text{TDA} + 11.16$
HZO.SC.H	$0.27 \times \text{TDA} + 2.06$
HZO.SC.M	$0.48 \times \text{TDA} + 3.71$
HZO.SC.L	$1.48 \times \text{TDA} + 5.5$
HZO.SC.I	$1.97 \times \text{TDA} + 7.34$
VCT.SC.H	$0.053 \times \text{V} + 0.85$
VCT.SC.M	$0.054 \times \text{V} + 0.86$
VCT.SC.L	$0.234 \times \text{V} + 2.38$
VCT.SC.I	$0.6 \times \text{TDA} + 3.2$
HCT.SC.M	$0.06 \times \text{V} + 0.37$
HCT.SC.L	$0.08 \times \text{V} + 1.23$
HCT.SC.I	$0.34 \times \text{TDA} + 0.43$
VCS.SC.H	$0.0082 \times \text{V} + 0.21$
VCS.SC.M	$0.02 \times \text{V} + 0.54$
VCS.SC.L	$0.155 \times \text{V} + 0.97$
VCS.SC.I	$0.25 \times \text{V} + 0.88$
HCS.SC.M	$0.022 \times \text{V} + 0.41$
HCS.SC.L	$0.043 \times \text{V} + 0.81$
HCS.SC.I	$0.31 \times \text{V} + 0.81$
SOC.SC.H	$0.17 \times \text{TDA} + 0.33$
SOC.SC.M	$0.304 \times \text{TDA} + 0.59$
SOC.SC.L	$1.1 \times \text{TDA} + 2.1$
SOC.SC.I	$1.53 \times \text{TDA} + 0.36$
CB.SC.M	$0.049 \times \text{V} + 0.54$
CB.SC.L	$0.180 \times \text{V} + 1.92$
PD.SC.M	$0.11 \times \text{V} + 0.81$
VCT.RC.M.PT	$0.139 \times \text{TDA} + 1.81$
VCT.SC.M.PT	$0.056 \times \text{V} + 0.86$
VCT.SC.L.PT	$0.243 \times \text{V} + 2.47$
VCS.SC.M.PT	$0.02 \times \text{V} + 0.56$
VCS.SC.L.PT	$0.161 \times \text{V} + 1.01$
VCT.RC.M.SD	$0.143 \times \text{TDA} + 1.86$
VCT.SC.M.SD	$0.058 \times \text{V} + 0.86$
VCT.RC.M.SDPT	$0.149 \times \text{TDA} + 1.93$
VCT.SC.M.SDPT	$0.060 \times \text{V} + 0.86$
VCT.RC.M.RI	$0.140 \times \text{TDA} + 1.83$
VCT.SC.M.RI	$0.057 \times \text{V} + 0.86$
VCS.SC.M.RI	$0.02 \times \text{V} + 0.57$
VCS.SC.L.RI	$0.162 \times \text{V} + 1.02$
VCT.RC.M.RT	$0.146 \times \text{TDA} + 1.9$
VCT.SC.M.RT	$0.059 \times \text{V} + 0.86$
VCS.SC.M.RT	$0.02 \times \text{V} + 0.59$
VCS.SC.L.RT	$0.169 \times \text{V} + 1.06$
HCS.SC.L.FA	$0.052 \times \text{V} + 0.97$

The equipment classes are separated by equipment family, condensing unit configuration, and operating temperature. Equipment Families: VOP—Vertical Open; SVO—Semi-Vertical Open; HZO—Horizontal Open; VCT—Vertical Closed Transparent; HCT—Horizontal Closed Transparent; VCS—Vertical Closed Solid; HCS—Horizontal Closed Solid; SOC—Service Over Counter; CB—Chef Base; PD—Pull Down. Condensing Unit Configurations: RC—Remote Condensing; SC—Self Contained. Operating Temperatures: H—High Temperature; M—Medium Temperature; L—Low Temperature; I—Ice Cream Temperature.

2020, available at www.congress.gov/bill/116thcongress/house-bill/133.

³ The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.8 of this document). The

TABLE I.2—DESCRIPTION OF COEFFICIENTS FOR PROPOSED MAXIMUM DAILY ENERGY CONSUMPTION STANDARDS FOR CRE

Unique design characteristic	Abbreviation
Pass-through Door	PT
Sliding Door	SD
Sliding and Pass-through Doors ...	SDPT
Roll-in Door	RI
Roll-through Door	RT
Forced Air Evaporator	FA

DOE requests comments on its proposal to require that the proposed standards, if adopted, would apply to all CRE listed in table I.1 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final new and amended standards are published. More generally, DOE requests comment on whether it would be beneficial to CRE manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR.

A. Benefits and Costs to Consumers

Table I.3 presents DOE’s evaluation of the economic impacts of the proposed standards—represented by TSL 5—on consumers of CRE, 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 equipment classes, and the PBP is less than the average lifetime for the vast majority of CRE equipment classes,⁴ which is estimated to be 13.9 years (see section IV.F.7 of this document).

simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.F.9 of this document).

⁴ For the HZO.RC.M equipment class, the estimated PBP at TSL 5 is 13.8 years for an estimated average lifetime of approximately 13 years.

TABLE I.3—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CRE

Equipment class	Average LCC savings (2022\$)	Simple payback period (years)
CB.SC.L	566.92	2.2
CB.SC.M	44.90	5.0
HCS.SC.L	7.77	5.1
HCS.SC.M	84.89	1.8
HCT.SC.L	55.03	7.1
HCT.SC.L * .....	.....	.....
HCT.SC.M * .....	.....	.....
HZO.RC.L	46.57	13.0
HZO.RC.M	40.29	13.8
HZO.SC.L	841.89	2.8
HZO.SC.M	199.91	5.2
SOC.RC.M	929.51	3.3
SOC.SC.M	698.37	5.4
SVO.RC.M	406.59	7.3
SVO.SC.M	602.17	4.3
VCS.SC.H	162.47	3.7
VCS.SC.I	486.70	3.4
VCS.SC.L	260.73	3.2
VCS.SC.M	128.81	4.1
VCT.RC.L	331.04	6.4
VCT.RC.M	133.62	10.9
VCT.SC.H * .....	.....	.....
VCT.SC.I	77.46	8.3
VCT.SC.L	120.34	5.8
VCT.SC.M	82.53	7.6
VOP.RC.L	1524.52	3.6
VOP.RC.M	707.13	5.7
VOP.SC.M	992.17	3.6

* For these equipment classes, TSL 5 corresponds to efficiency level 0.

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers⁵

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 (2023–2057). Using a real discount rate of 10.0 percent, DOE estimates that the INPV for manufacturers of CRE in the case without new and amended standards is \$3,286.4 million. Under the proposed standards, the change in INPV is estimated to range from –4.8 percent to –0.9 percent, which is approximately –\$159.3 million to –\$30.9 million. In order to bring equipment into compliance with new and amended standards, it is estimated that the industry would incur total conversion costs of \$226.4 million.⁶

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this

document. The analytic results of the manufacturer impact analysis ("MIA") are presented in section V.B.2 of this document.

C. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standards for CRE would save a significant amount of energy. Relative to the case without new and amended standards, the lifetime energy savings for CRE purchased in the 30-year period that begins in the anticipated year of compliance with the new and amended standards (2028–2057) amount to 3.11 quadrillion British thermal units ("Btu"), or quads.⁷ This represents a savings of 16.8 percent relative to the energy use of these equipment in the case without new or amended standards (referred to as the "no-new-standards case").

The cumulative net present value ("NPV") of total consumer benefits of the proposed standards for CRE ranges from \$2.4 billion (at a 7-percent

discount rate) to \$7.1 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for CRE purchased in 2028–2057.

In addition, the proposed standards for CRE are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 55.8 million metric tons ("Mt")⁸ of carbon dioxide ("CO₂"), 17.1 thousand tons of sulfur dioxide ("SO₂"), 104.2 thousand tons of nitrogen oxides ("NO_x"), 472 thousand tons of methane ("CH₄"), 0.54 thousand tons of nitrous oxide ("N₂O"), and 0.12 tons of mercury ("Hg").⁹

DOE estimates the value of climate benefits from a reduction in greenhouse gases ("GHG") using four different estimates of the social cost of CO₂ ("SC-

⁸ A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO₂ are presented in short tons.

⁹ DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2023* ("AEO2023"). AEO2023 reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the Inflation Reduction Act. See section IV.K of this document for further discussion of AEO2023 assumptions that effect air pollutant emissions.

⁵ All monetary values in this document are expressed in 2022 dollars.

⁶ Conversion costs are incurred between the publication of the final rule (modeled as 2025) and the compliance year (modeled as 2028) and are included in the change in INPV presented in this section.

⁷ The quantity refers to full-fuel-cycle ("FFC") energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

CO₂”), the social cost of methane (“SC-CH₄”), and the social cost of nitrous oxide (“SC-N₂O”). Together these represent the social cost of GHG (“SC-GHG”). DOE used interim SC-GHG values (in terms of benefit per ton of GHG emissions avoided) developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (“IWG”).¹⁰ The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are estimated to be \$3.04 billion. DOE does not have a single central SC-GHG point estimate

and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates.

DOE estimated the monetary health benefits of SO₂ and NO_x emissions reductions using benefit per ton estimates from the Environmental Protection Agency,¹¹ as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be \$2.32 billion using a 7-percent discount rate, and \$5.94 billion using a 3-percent discount rate.¹² DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (PM_{2.5})

concentrations from two precursors (SO₂ and NO_x), and from changes in ambient ozone from one precursor (for NO_x), but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions.

Table I.4 summarizes the monetized benefits and costs expected to result from the proposed standards for CRE. 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.4—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE (TSL 5)

	Billion 2022\$
3% discount rate	
Consumer Operating Cost Savings	12.8
Climate Benefits *	3.04
Health Benefits **	5.94
Total Benefits †	21.8
Consumer Incremental Equipment Costs	5.74
Net Benefits	16.1
Change in Producer Cashflow (INPV‡‡)	(0.16)–(0.03)
7% discount rate	
Consumer Operating Cost Savings	5.55
Climate Benefits * (3% discount rate)	3.04
Health Benefits **	2.32
Total Benefits †	10.9
Consumer Incremental Equipment Costs	3.17
Net Benefits	7.74
Change in Producer Cashflow (INPV‡‡)	(0.16)–(0.03)

Note: This table presents the costs and benefits associated with CRE shipped in 2028–2057. These results include consumer, climate, and health benefits that accrue after 2057 from the equipment shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO₂), methane (SC-CH₄), and nitrous oxide (SC-N₂O) (model average at 2.5-percent, 3-percent, and 5-percent discount rates; 95th percentile at 3-percent discount rate) (see section IV.L of this document). Together these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990 published in February 2021 by the IWG.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. See section IV.L of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate.

¹⁰ To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the Technical Support Document: *Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG. (“February 2021 SC-GHG TSD”). [www.whitehouse.gov/wp-](http://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf)

[content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf](http://www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors).

¹¹ U.S. EPA. Estimating the Benefit per Ton of Reducing Directly Emitted PM_{2.5}, PM_{2.5} Precursors and Ozone Precursors from 21 Sectors. Available at

www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.

¹² 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.

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For commercial refrigeration equipment, those values are –\$159 million to –\$31 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated INPV in the above table, drawing on the MIA explained further in section IV.J of this document, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the net benefit calculation for this proposed rule, the net benefits would range from \$15.94 billion to \$16.07 billion at 3-percent discount rate and would range from \$7.58 billion to \$7.71 billion at 7-percent discount rate. Parentheses () indicate negative values. DOE seeks comment on this approach.

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 equipment purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.¹³

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered equipment and are measured for the lifetime of CRE shipped in 2028–2057. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of CRE shipped in 2028–

2057. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC-GHG values are presented for all four discount rates in section V.L of this document.

Table I.5 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this

rule is \$334.6 million per year in increased equipment costs, while the estimated annual benefits are \$586.1 million in reduced equipment operating costs, \$174.4 million in climate benefits, and \$245.5 million in health benefits. In this case, the net benefit would amount to \$671.4 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is \$329.8 million per year in increased equipment costs, while the estimated annual benefits are \$737.7 million in reduced operating costs, \$174.4 million in climate benefits, and \$341.3 million in health benefits. In this case, the net benefit would amount to \$923.5 million per year.

TABLE I.5—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE (TSL 5)

	Million 2022\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	737.7	714.3	773.7
Climate Benefits *	174.4	173.5	178.9
Health Benefits **	341.4	339.7	349.9
Total Benefits †	1253.3	1227.5	1302.8
Consumer Incremental Equipment Costs	329.8	337.9	328.3
Net Benefits	923.5	889.5	974.1
Change in Producer Cashflow (INPV ‡‡)	(17)–(3)	(17)–(3)	(17)–(3)
7% discount rate			
Consumer Operating Cost Savings	586.1	569.3	613.0
Climate Benefits * (3% discount rate)	174.4	173.5	178.9
Health Benefits **	245.5	244.7	250.9
Total Benefits †	1006.0	987.5	1042.8
Consumer Incremental Equipment Costs	334.6	341.7	333.5
Net Benefits	671.4	645.7	709.3

¹³To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2023, the year used for discounting the NPV of total consumer costs and savings. For the

benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (e.g., 2030), and then discounted the present value from each year to 2023. 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.5—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE (TSL 5)—Continued

	Million 2022\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Change in Producer Cashflow (INPV $\ddagger\ddagger$)	(17)–(3)	(17)–(3)	(17)–(3)

Note: This table presents the costs and benefits associated with CRE shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the equipment shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections V.F.1 and V.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with 3-percent discount rate.

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For commercial refrigeration equipment, those values are –\$16.65 million to –\$3.23 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation for this proposed rule, the annualized net benefits would range from \$906.8 million to \$920.3 million at 3-percent discount rate and would range from \$654.7 million to \$668.2 million at 7-percent discount rate. Parentheses () indicate negative values. DOE seeks comment on this approach.

DOE's analysis of the national impacts of the proposed standards is described in sections V.H, V.K, and V.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, design options used to achieve these standard levels are already commercially available for all equipment classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for CRE is \$334.6 million per year in increased equipment

costs, while the estimated annual benefits are \$586.1 million in reduced equipment operating costs, \$174.4 million in climate benefits and \$245.5 million in health benefits. The net benefit amounts to \$671.4 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.¹⁴ For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these equipment on the energy infrastructure can be more pronounced than equipment 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

¹⁴ 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).

estimated national energy savings of 3.11 quad FFC, the equivalent of the primary annual energy use of 33 million homes. The NPV of consumer benefit for these projected energy savings is \$2.38 billion using a discount rate of 7 percent, and \$7.10 billion using a discount rate of 3 percent. The cumulative emissions reductions associated with these energy savings are 55.8 Mt of CO₂, 17.1 thousand tons of SO₂, 104.2 thousand tons of NO_x, 0.12 tons of Hg, 472.0 thousand tons of CH₄, and 0.54 thousand tons of N₂O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) is \$ 3.04 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions is \$ 2.32 billion using a 7-percent discount rate and \$ 5.94 billion using a 3-percent discount rate. As such, DOE has initially determined the energy savings from the proposed standard levels are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these tentative conclusions is contained in the

remainder of this document and the accompanying technical support document (“NOPR TSD”).¹⁵

DOE also considered more stringent energy efficiency levels as potential standards and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for CRE.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer equipment and certain industrial equipment. Title III, part C of EPCA, added by Public Law 95–619, title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRE, the subject of this document. (42 U.S.C. 6311(1)(E))

EPCA established standards for certain categories of CRE (42 U.S.C. 6313(c)(2)–(4)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)(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 equipment 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. 6316(e)(1); 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 include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6316(a) and 42 U.S.C. 6316(e) (applying the preemption waiver provisions of 42 U.S.C. 6297))

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 equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s)) The DOE test procedures for CRE appear at title 10 of the Code of Federal Regulations (“CFR”) part 431, subpart C, appendix B (“appendix B”).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including CRE. Any new or amended standard for a covered equipment 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)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard: (1) for certain equipment, including CRE, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6316(e)(1); 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. 6316(e)(1); 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 equipment subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment 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 equipment 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. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing an equipment 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. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(1)) Also, the Secretary

¹⁵ The NOPR TSD is available in the docket for this rulemaking at www.regulations.gov/docket/EERE-2017-BT-STD-0007.

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 equipment 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. 6316(e)(1); 42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered equipment that has two or more subcategories. DOE must specify a different standard level for a type or class of equipment that has the same function or intended use, if DOE determines that equipment within such group: (A) consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis

on which such higher or lower level was established. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(q)(2))

B. Background

1. Current Standards

On March 28, 2014, DOE published a final rule in the **Federal Register** that prescribed the current energy conservation standards for CRE manufactured on and after March 27, 2017 (“March 2014 Final Rule”). 79 FR 17725. These standards are set forth in DOE’s regulations at 10 CFR 431.66(e).

For CRE with two or more compartments (*i.e.*, hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers), 10 CFR 431.66(e)(2) specifies that the maximum daily energy consumption for each model shall be the sum of the applicable standard for each of the compartments, as specified in 10 CFR 431.66(e)(1). For wedge cases, 10 CFR 431.66(e)(3) specifies instructions to comply with the applicable standards specified in 10 CFR 431.66(e)(1).¹⁶ Certain exclusions to the standards at 10 CFR 431.66(e)(1) are specified at 10 CFR 431.66(f) (*i.e.*, the energy conservation standards do not apply to salad bars, buffet tables, and chef bases or griddle stands).

2. History of Standards Rulemaking for CRE

On July 16, 2021, DOE published a request for information (“RFI”) in the

Federal Register to undertake an early assessment review for amended energy conservation standards for CRE to determine whether to amend applicable energy conservation standards for this equipment. (“July 2021 RFI”) 86 FR 37708. Specifically, through the published notice and request for information, DOE sought data and information that could enable the agency to determine whether amended energy conservation standards would: (1) result in a significant savings of energy; (2) be technologically feasible; and (3) be economically justified. *Id.*

On June 28, 2022, DOE published in the **Federal Register** a notification of the availability of a preliminary technical support document for CRE (“June 2022 Preliminary Analysis”). 87 FR 38296. In that notification, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate potential standards for CRE, the results of preliminary analyses performed, and the potential energy conservation standard levels derived from these analyses, which DOE presented in the accompanying Preliminary TSD (“June 2022 Preliminary TSD”).¹⁷ *Id.* DOE held a public meeting related to the June 2022 Preliminary Analysis on August 8, 2022 (hereafter, the “August 8, 2022, public meeting”).

DOE received comments in response to the June 2022 Preliminary Analysis from the interested parties listed in table II.1.

TABLE II.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE JUNE 2022 PRELIMINARY ANALYSIS

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
AHT Cooling Systems	AHT	48	Manufacturer.
Air-Conditioning, Heating and Refrigeration Institute	AHRI	46	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, and the Natural Resources Defense Council.	Joint Commenters	39	Efficiency Organizations.
California Investor-Owned Utilities	CA IOUs	43	Energy Utilities.
Continental Refrigerator	Continental	38	Manufacturer.
Hillphoenix	Hillphoenix	* 42	Manufacturer.
Husmann Corporation	Husmann	45	Manufacturer.
ITW-Food Equipment Group, LLC dba Traulsen/Kairak	ITW	41	Manufacturer.
National Automatic Merchandising Association	NAMA	37	Trade Association.
North American Association of Food Equipment Manufacturers	NAFEM	40	Trade Association.
Northwest Energy Efficiency Alliance	NEEA	47	Efficiency Organizations.
Zero Zone, Inc	Zero Zone	44	Manufacturer.

* Hillphoenix requested that its response be treated as Confidential Business Information.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.¹⁸ Where interested

parties have provided written comments that are substantively consistent with their oral comments provided during the August 8, 2022, public meeting,

DOE cites the written comments throughout this document. DOE did not identify any oral comments provided during the August 8, 2022, public

¹⁶ A wedge case is a CRE that forms the transition between two regularly shaped display cases. 10 CFR 431.62.

¹⁷ The June 2022 Preliminary TSD is available in the docket for this rulemaking at

www.regulations.gov/document/EERE-2017-BT-STD-0007-0013.

¹⁸ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation

standards for CRE. (Docket No. EERE–2017–BT–STD–0007, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

meeting, that are substantively different from written comments provided by interested parties.

C. Deviation From Process Rule

In accordance with 10 CFR 431.4 and section 3(a) of 10 CFR part 430, subpart C, appendix A (“Process Rule”), DOE notes that it is deviating from the provision in the Process Rule regarding the pre-NOPR and NOPR stages for an energy conservation standard rulemaking.

1. Framework Document

Section 6(a)(2) of the Process Rule states that if DOE determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. While DOE published a preliminary analysis for this rulemaking (*see* 87 FR 38296), DOE did not publish a framework document in conjunction with the preliminary analysis. DOE notes, however, that chapter 2 of the June 2022 Preliminary TSD that accompanied the June 2022 Preliminary Analysis—entitled *Analytical Framework, Comments from Interested Parties, and DOE Responses*—describes the general analytical framework that DOE used in evaluating and developing potential new and amended energy conservation standards.¹⁹ As such, publication of a separate framework document would be largely redundant of chapter 2 of the June 2022 Preliminary TSD.

2. Public Comment Period

Section 6(f)(2) of the Process Rule specifies that the length of the public comment period for a NOPR will be not less than 75 calendar days. For this NOPR, DOE is instead providing a 60-day comment period, consistent with EPCA requirements. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(p).)

As noted previously, DOE requested comment in the July 2021 RFI on the analysis conducted in support of the last energy conservation standard rulemaking for CRE and provided a 45-day comment period. (*See* 86 FR 37708). In its June 2022 Preliminary Analysis and accompanying TSD, for which DOE provided a 60-day comment period, DOE’s analysis remained largely the same as the analysis conducted in support of the last energy conservation

standards rulemaking for CRE. DOE requested comment in the June 2022 Preliminary Analysis on the analysis conducted in support of this current rulemaking. In this NOPR, DOE incorporated the most recent data inputs but largely relied on many of the same analytical assumptions and approaches used in the June 2022 Preliminary Analysis. Given that the analysis presented in this NOPR remains largely the same as the June 2022 Preliminary Analysis, and in light of the 45-day comment period DOE has already provided with the July 2021 RFI and the 60-day comment period DOE has already provided with its June 2022 Preliminary Analysis, DOE has determined that a 60-day comment period is appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

3. Amended Test Procedures

Section 8(d)(1) of the Process Rule specifies that test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards. Additionally, new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for (1) a NOPR proposing new or amended energy conservation standards or (2) a notice of proposed determination that standards do not need to be amended.

On September 26, 2023, DOE published a **Federal Register** notice amending and establishing test procedures for CRE (“September 2023 Test Procedure Final Rule”). 88 FR 66152. DOE determined that the amendments adopted in the September 2023 Test Procedure Final Rule will not alter the measured efficiency of CRE currently subject to energy conservation standards. 88 FR 66152, 66156. However, the measured energy use for chef bases or griddle stands and high-temperature refrigerators would likely change as a result of the September 2023 Test Procedure Final Rule. Nonetheless, the September 2023 Test Procedure Final Rule aligns with the requirements that the CRE industry has developed or proposed. Specifically, AHRI 1200–2023²⁰ was approved by the American National Standards Institute on June 12,

2023, and addendum B to ASHRAE 72–2022²¹ was proposed on September 15, 2023. AHRI 1200–2023 specifies that high-temperature refrigerators shall be tested at an integrated average temperature of 55 °F ± 2.0 °F, consistent with the September 2023 Test Procedure Final Rule. The addendum B to ASHRAE 72–2022 proposal specifies a dry-bulb temperature of 86.0 °F with a tolerance for the average over test period of ± 1.8 °F and a tolerance for the individual measurements of ± 3.6 °F; wet-bulb temperature of 73.7 °F with a tolerance for the average over test period of ± 1.8 °F and a tolerance for the individual measurements of ± 3.6 °F; and radiant heat temperature of greater than or equal to 81.0 °F, consistent with the September 2023 Test Procedure Final Rule. Both AHRI 1200–2023 and the proposed addendum B to ASHRAE 72–2022 were developed by the CRE industry over several years, and the September 2023 Test Procedure Final Rule aligns with the provisions included in both test standards for chef bases or griddle stands and high-temperature refrigerators. As such, DOE finds it appropriate to deviate from the requirement that the amended test procedures for chef bases or griddle stands and high-temperature refrigerators be finalized at least 180 days prior to the close of the comment period for this NOPR.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

NEEA generally supported the process outlined in the June 2022 Preliminary Analysis. (NEEA, No. 47 at p. 5) NEEA commented that DOE’s analysis in the June 2022 Preliminary TSD showed a strong standard for CRE equipment would be economically justified and deliver significant energy savings to the Nation. (*Id.*) As a result, NEEA recommended DOE adopt increased efficiency standards for existing classes

¹⁹ The June 2022 Preliminary TSD is available in the docket for this rulemaking at www.regulations.gov/document/EERE-2017-BT-STD-0007-0013.

²⁰ AHRI Standard 1200–2023 (I–P), 2023 *Standard for Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, copyright 2023.

²¹ Proposed Addendum b to Standard 72–2022, Method of Testing Open and Closed Commercial Refrigerators and Freezers. *See* https://osr.ashrae.org/Online-Comment-Database/ShowDoc2/Table/DocumentAttachments/FileName/4130-72-2022%20Addendum%20b.21_072823_chair_approved.pdf/download/false.

of CRE and continue to push the industry toward more-efficient products and greater energy savings across all CRE equipment classes via technical, market, and economic analyses. (*Id.*) NEEA recommended further that DOE consider energy-saving technologies in CRE and that DOE collect additional data for analysis. (*Id.*) NEEA stated that they believe further analysis of specific features would help establish stronger standards, especially when the analysis improved representativeness of equipment in the market and appropriately characterized energy use and energy savings. (*Id.*) NEEA stated it recognized CRE as a complex energy conservation standard with many combinations of equipment and a variety of use cases and commended DOE for the depth of analysis and concerted efforts to incorporate new classes and utilize available data for analysis. (*Id.*) NEEA commented that DOE's analysis demonstrated significant cost-effective savings, and NEEA recommended DOE adopt increased energy conservation standards for existing CRE equipment classes as supported by the analysis in the June 2022 Preliminary TSD. (*Id.*)

Other commenters expressed concern with the rulemaking timeline. NAFEM commented that it had previously requested a comment period extension, which was denied, and requested to see the CRE engineering spreadsheets, which were provided on August 18, 2022, leaving an 11-calendar-day review period. (NAFEM, No. 40 at p. 2) NAFEM acknowledged that DOE had initiated multiple energy efficiency rulemakings on a compressed schedule, but NAFEM stated that this did not serve as justification for neglecting to provide important information and adequate time for review. (*Id.*) NAFEM disagreed with DOE's justification that the comment period could be shortened due to similarities between the June 2022 Preliminary TSD and its 2014 counterpart. (*Id.*) NAFEM commented that many of its concerns regarding the July 2021 RFI were dismissed or remain unresolved in the June 2022 Preliminary TSD. (*Id.*) Furthermore, NAFEM commented that DOE's claim was inaccurate that the engineering spreadsheets "do not contain any new or additional information that was not already published with the TSD in June." (*Id.*) NAFEM added that it would have had two additional weeks to analyze the spreadsheets if DOE had adhered to the appendix A Process Rule permitting no less than a 75-day comment period. (*Id.* at pp. 2–3) NAFEM concluded that it was unable to

provide a complete list of errors or concerns due to insufficient time and presented its comments as representative, but not exhaustive, of the types of problems and inaccuracies contained in the spreadsheets. (*Id.* at p. 3)

Hussmann commented that it supports the comments provided by AHRI and NAFEM and noted that it and other commenters were denied extensions to the August 29, 2022, comment deadline. (Hussmann, No. 45 at p. 1). Hussmann stated that it hopes discussions with DOE will improve this rulemaking. (*Id.*)

NAMA shared its view that, despite this CRE rulemaking being one of the most complex DOE has undertaken within EERE, DOE reduced the time for public comment. (NAMA, No. 37 at p. 4) NAMA additionally commented that DOE released the engineering spreadsheets on August 8, 2022, leaving only 7 working days for review prior to the comment receipt deadline, and that this limited notice violated all elements of the notice and comment in the Administrative Procedure Act.²² (*Id.*) NAMA added that the United States has admonished other countries for similar regulatory actions. (*Id.*)

ITW commented that the June 2022 Preliminary TSD made clear the importance of the CRE engineering spreadsheet, prompting ITW to request that DOE grant access to the spreadsheet. (ITW, No. 41 at p. 1). ITW stated that DOE provided the spreadsheet but did not extend the comment period to allow adequate time for review of information ITW considered critical. (*Id.*)

In response to comments regarding timing and the 2022 Engineering Spreadsheet Related to the Preliminary Analysis for Commercial Refrigerators, Refrigerator-Freezers and Freezers Standards ("engineering spreadsheet"), DOE published this document in the rulemaking docket on August 18, 2022 after commenters requested its publication. This practice was consistent with prior rulemakings conducted for CRE, such as when DOE did not include an engineering spreadsheet with the notice of availability of preliminary technical support document published on March 30, 2011 ("March 2011 Preliminary Analysis"). Instead, DOE published the engineering spreadsheet with its NOPR on September 11, 2013. Similarly, in this rulemaking, DOE did not publish the engineering spreadsheet used for the preliminary analysis at the time of the June 2022 Preliminary Analysis

publication. Consistent with past practice, DOE is publishing the engineering spreadsheet that supports this NOPR analysis along with this NOPR.

With respect to comments regarding the comment-period, DOE discusses deviations from the Process Rule, and the justifications for such deviations, in section II.C of this NOPR.

In response to comments regarding the Administrative Procedure Act, 5 U.S.C. 553 provides requirements for a notice of proposed rulemaking. The June 2022 Preliminary Analysis was not a notice of proposed rulemaking as it was a notification that announced the availability of the preliminary analysis DOE had conducted for purposes of evaluating the need for amended energy conservation standards for CRE. However, DOE provided notice of that preliminary analysis and sought comment on the analysis. See 87 FR 38296. The June 2022 Preliminary Analysis was in compliance with EPCA and the Process Rule.

Other commenters had general comments regarding the June 2022 Preliminary Analysis, the accompanying June 2022 Preliminary TSD, and the rulemaking process. NAMA commented that the June 2022 Preliminary TSD is flawed and should be re-written, with CRE categories split into ranges by size. (NAMA, No. 37 at p. 8) NAMA stated that if the engineering analysis were to be incorrect, then the technology screening would be incorrect also, which means the baseline machine design was incorrect and the rest of the report could not be used. (*Id.*) NAMA recommended that DOE begin the process again, using machines that are currently available on the market as its baseline. (*Id.*) NAMA also recommended that DOE use low-GWP refrigerants and incorporate most of the design options shown in table 5.8.10 of NAMA's written submission, along with current costs. (*Id.*) NAMA added that if this approach is not possible, DOE should acknowledge the costs already incurred by manufacturers to meet the goals established by the Biden Administration to reduce global warming. (*Id.*)

NAMA commented that while it appreciated DOE's willingness to hold a hearing on the proposed energy efficiency standards levels, it believed that the August 8, 2022, public meeting was rushed and abruptly terminated before all questions were answered. (NAMA, No. 37 at p. 4) NAMA requested that DOE return to "in-person" meetings to support dialogue on these subjects. (*Id.*)

²² See 5 U.S.C. 551–559.

NAMA commented that the market dynamic was currently distorted due to the COVID-19 pandemic and a lack of available equipment, making efficiency a secondary priority to availability. (*Id.* at p. 16)

NAMA recommended that DOE should cease the rulemaking on this category of CRE until after the beverage vending machines rulemaking is in the final rule stage and until the test procedure for CRE equipment is finalized. (*Id.* at p. 17) NAMA commented that due to the fact that the rulemakings for beverage vending machines and CRE affect the same manufacturers, overlapping comment periods result in result increased complexity to the responses. (*Id.*) NAMA also stated that a final test procedure should be established before setting future standard levels, and that the Process Rule requires DOE to finish the test procedure rulemaking before engaging in cost and energy calculations for a new standard. (*Id.*) NAMA further commented that DOE has requested comments on the CRE test procedure at the same time as it requested comments on the NOPR for future standards levels. (*Id.*) NAMA stated that, it is illogical to set future standards levels because the final test procedure for CRE is not yet known. (*Id.*)

Finally, NAMA commented that it does not believe the June 2022 Preliminary TSD or other documents for this rulemaking reflect the state of the CRE industry in 2022 or the projections for equipment manufactured after this rule becomes effective. (*Id.* at p. 19) NAMA requested that DOE conduct a complete revision of all energy efficiency changes, the base case, the standards cases, and the economic analysis after the test procedure final standard is issued and the Cooperative Research and Development Agreement (“CRADA”) ²³ extension is complete. (*Id.*) NAMA stated its belief that accurate information will show that a new set of standards levels for the classes of CRE covered by NAMA is unwarranted. (*Id.*) NAMA commented that the payback period will grow significantly when the net present value is re-calculated using accurate numbers. (*Id.*) NAMA recommended allowing manufacturers to complete the change to hydrocarbon refrigerants, which NAMA asserted would have up to 10 times the

environmental impact of any new DOE standards. (*Id.*)

In response to NAMA’s comments, DOE is maintaining the current equipment class structure in this NOPR, except for the new equipment classes which are proposed and discussed in section IV.A.1.c of this document. In accordance with section 6(d)(3) of the Process Rule, DOE may make any necessary changes to the engineering analysis or the candidate standard levels based on consideration of the comments received. DOE notes that it considered CRE that are currently available on the market when developing the NOPR engineering analysis. DOE acknowledges and accounts for the December 2022 EPA NOPR in this NOPR analysis. As noted in section I of this document, the December 2022 EPA NOPR would prohibit manufacture or import of such CRE starting January 1, 2025, and would ban sale, distribution, purchase, receipt, or export of such CRE starting January 1, 2026. 87 FR 76809. The December 2022 EPA NOPR compliance date would occur prior to the expected the compliance date of any DOE amended or established standards (*i.e.*, on or after the date that is 3 years after the date on which the final new and amended standards are published). Thus, the transition to refrigerants in compliance with the December 2022 EPA NOPR (including hydrocarbon refrigerants) would have already occurred prior to the expected the compliance date of any DOE amended or established standards. Additionally, DOE considered the December 2022 EPA NOPR when developing the NOPR engineering analysis baseline as discussed in section IV.C.1.a of this document. In the no-new-standards case, DOE incorporated the cost of refrigerant transition as discussed in section IV.J.2.c of this document. DOE also revised the components considered in the engineering analysis baseline in this NOPR as discussed in section IV.C.1.a of this document and updated the costs as discussed in section IV.C.2. of this document. In response to market distortions, DOE used the latest shipments, market shares, and MPCs based on manufacturer feedback. Supply chain constraints are discussed in section V.B.2.c of this document.

In response to the comments about the August 8, 2022, public meeting, DOE notes that it responded to all questions asked during the August 8, 2022, public meeting.²⁴ Similar to the process with the June 2022 Preliminary Analysis, DOE welcomes comments in

response to this NOPR and participation in the public meeting, and DOE provides information on public participation in response to this NOPR in section VII. of this document.

DOE notes that section 8(d)(1) of the Process Rule specifies that test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new and amended energy conservation standards. Additionally, energy conservation standards for refrigerated bottled or canned beverage vending machines are separate from CRE, and evaluated through a separate rulemaking process, and are located at 10 CFR 431.296.

AHT stated that there is a high risk of eliminating the entire equipment class if DOE were to further increase restrictions for horizontal closed transparent self-contained low temperature (“HCT.SC.L”), horizontal closed transparent self-contained medium temperature (“HCT.SC.M”), horizontal closed transparent self-contained ice-cream freezer (“HCT.SC.I”), and vertical closed transparent self-contained low temperature (“VCT.SC.L”) equipment classes and recommended that DOE maintain the current regulatory framework in design options and efficiency standards for these equipment classes. (AHT, No. 48 at p. 6)

In response to AHT’s comments, DOE has revised the components considered in the engineering analysis baseline in this NOPR as discussed in section IV.C.1.a of this document and presented the results of this NOPR analysis in section V of this document. DOE also notes that it observed CRE models currently available and rated to the DOE Compliance Certification Database (“CCD”) that currently comply with the proposed energy conservation standards in this NOPR for the equipment classes listed in AHT’s comment.

B. Scope of Coverage

This NOPR covers those commercial refrigeration equipment that meet the definition of “commercial refrigerators, refrigerator-freezers, and freezers,” as codified at 10 CFR 431.62.

A “commercial refrigerator, freezer, and refrigerator-freezer” means refrigeration equipment that—(1) is not consumer equipment (as defined in § 430.2); (2) is not designed and marketed exclusively for medical, scientific, or research purposes; (3) operates at a chilled, frozen, combination chilled and frozen, or variable temperature; (4) displays or stores merchandise and other perishable

²³ Most of the activities of the 2019–2021 CRADA were directed toward reduction of the risk involved in a possible leak situation if it were ever to occur. ORNL did extensive testing on leak scenarios and proposed new methods to reduce the risk from such a leak in a public space.

²⁴ See www.regulations.gov/document/EERE-2017-BT-STD-0007-0049.

materials horizontally, semi-vertically, or vertically; (5) has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors; (6) is designed for pull-down temperature applications or holding temperature applications; and (7) is connected to a self-contained condensing unit or to a remote condensing unit. 10 CFR 431.62.

However, this NOPR does not include some types of commercial refrigerators, refrigerator-freezers, and freezers that meet the definition at 10 CFR 431.62. These include blast chillers, blast freezers, buffet tables or preparation tables, and mobile refrigerated cabinets.

See section IV.A.1 of this document for discussion of the equipment classes analyzed in this NOPR.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6314(d); 42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(s)) DOE's current energy conservation standards for CRE are expressed in terms of maximum daily energy consumption as measured using appendix B. (See 10 CFR 431.66(e))

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available equipment or in working prototypes to be technologically feasible. 10 CFR 431.4; sections 6(b)(3)(i) and 7(b)(1) of the Process Rule.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional

screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on equipment utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. 10 CFR 431.4; sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of the Process Rule. Section IV.B of this document discusses the results of the screening analysis for CRE, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (42 U.S.C. 6316(e)(1); 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 CRE, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this proposed rule and in chapter 5 of the NOPR TSD.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to CRE purchased in the 30-year period that begins in the year 2028 with the proposed standards (2028–2057).²⁵ The savings are measured over the entire lifetime of CRE purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for equipment would likely evolve in the absence of

new and amended energy conservation standards.

DOE used its national impact analysis (“NIA”) spreadsheet model to estimate national energy savings (“NES”) from potential amended and new standards for CRE. 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 equipment 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. 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.²⁶ 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.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for covered equipment, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6316(e)(1); 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.²⁷ For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these equipment on the energy infrastructure can be more pronounced than equipment with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to

²⁶ The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

²⁷ The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 12, 2021 (86 FR 70892, 70906).

²⁵ Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period. Note that the analysis does not consider benefits and costs resulting from the December 2022 EPA NOPR.

confront the global climate crisis, among other factors.

As stated, the standard levels proposed in this document are projected to result in national energy savings of 3.11 quad FFC, the equivalent of the primary annual energy use of 33 million homes. Based on the amount of FFC savings, the corresponding reduction in emissions, and the need to confront the global climate crisis, DOE has initially determined the energy savings from the proposed standard levels are “significant” within the meaning of 42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this proposed rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential new or amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new and 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; for CRE, DOE evaluated the impacts on small businesses.

DOE requests comment on the impacts to CRE manufacturers and consumers from the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA).

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 equipment 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 equipment that are likely to result from a standard. (42 U.S.C. 6316(e)(1); 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 equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as equipment 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 more-efficient equipment 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 equipment in the first full year of compliance with new and 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 and 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. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Equipment

In establishing equipment 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 equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the equipment under consideration in this proposed rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6316(e)(1); 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. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (“DOJ”) provide its determination on this issue. DOE will publish and respond to the Attorney General’s determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and 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. 6316(e)(1); 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

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the equipment 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. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(iii)) 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. 6316(e)(1) and 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 V.B.1.c of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to CRE. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended and 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 proposed rulemaking: www.regulations.gov/docket/EERE-2017-BT-STD-0007. Additionally, DOE used output from the 2023 version of the Energy Information Administration's ("EIA's") *Annual Energy Outlook* ("AEO"), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. 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 equipment 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 CRE. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Equipment Classes and Definitions

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered equipment (*i.e.*, establish a separate equipment 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. 6316(e)(1); 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.*)

a. Current Equipment Classes

DOE currently separates CRE into 49 equipment classes, which are categorized according to the following performance-related features: (1) operating temperature—refrigerator ($\geq 32^\circ\text{F}$), freezer ($< 32^\circ\text{F}$), or ice-cream freezer ($\leq -5^\circ\text{F}$); (2) presence of doors—open or closed; (3) door type—solid or transparent; (4) condensing unit—remote or self-contained; (5) configuration—horizontal, vertical, semi-vertical, or service over counter; (6) temperature pull-down capability. Definitions supporting the equipment classes are as follows:

Closed solid means equipment with doors, and in which more than 75 percent of the outer surface area of all doors on a unit are not transparent.

Closed transparent means equipment with doors, and in which 25 percent or more of the outer surface area of all doors on the unit are transparent.

Commercial freezer means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating below 32°F ($\pm 2^\circ\text{F}$).

Commercial refrigerator means a unit of commercial refrigeration equipment in which all refrigerated compartments in the unit are capable of operating at or above 32 °F (±2 °F).

Commercial refrigerator, freezer, and refrigerator-freezer means refrigeration equipment that—(1) Is not a consumer product (as defined in § 430.2);

(2) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(3) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(4) Displays or stores merchandise and other perishable materials horizontally, semi-vertically, or vertically;

(5) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(6) Is designed for pull-down temperature applications or holding temperature applications; and

(7) Is connected to a self-contained condensing unit or to a remote condensing unit.

Door means a movable panel that separates the interior volume of a unit of commercial refrigeration equipment from the ambient environment and is designed to facilitate access to the refrigerated space for the purpose of loading and unloading product. This includes hinged doors, sliding doors, and drawers. This does not include night curtains.

Holding temperature application means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.

Horizontal Closed means equipment with hinged or sliding doors and a door angle greater than or equal to 45°.

Horizontal Open means equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

Ice-cream freezer means:

(1) Prior to the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below –5.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or

(2) Upon the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below –13.0 °F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

Pull-down temperature application means a commercial refrigerator with doors that, when fully loaded with 12 ounce beverage cans at 90 degrees F, can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.

Remote condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

Self-contained condensing unit means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated

equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.

Semivertical open means equipment without doors and an air-curtain angle greater than or equal to 10° and less than 80° from the vertical.

Service over counter means equipment that has sliding or hinged doors in the back intended for use by sales personnel, with glass or other transparent material in the front for displaying merchandise, and that has a height not greater than 66 inches and is intended to serve as a counter for transactions between sales personnel and customers.

Transparent means greater than or equal to 45-percent light transmittance, as determined in accordance with the ASTM Standard E 1084–86 (Reapproved 2009), at normal incidence and in the intended direction of viewing.

Vertical Closed means equipment with hinged or sliding doors and a door angle less than 45°.

Vertical Open means equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.

10 CFR 431.62.

On March 28, 2014, DOE published in the **Federal Register** the March 2014 Final Rule that established the current equipment classes and corresponding standards for CRE. 79 FR 17725. DOE currently sets forth energy conservation standards and relevant definitions for CRE equipment classes at 10 CFR 431.66 and 10 CFR 431.62, respectively. Table IV.1 shows the current CRE equipment classes and standards.

TABLE IV.1—CURRENT CRE EQUIPMENT CLASSES

Condensing unit configuration	Equipment family	Operating temperature (°F)	Equipment class designation	Maximum daily energy consumption (kilowatt-hours per day) *
Remote Condensing (RC).	Vertical Open (VOP)	≥32	VOP.RC.M	0.64 × TDA + 4.07
		<32	VOP.RC.L	2.2 × TDA + 6.85
		≤–5	VOP.RC.I	2.79 × TDA + 8.7
	Semivertical Open (SVO)	≥32	SVO.RC.M	0.66 × TDA + 3.18
		<32	SVO.RC.L	2.2 × TDA + 6.85
		≤–5	SVO.RC.I	2.79 × TDA + 8.7
	Horizontal Open (HZO)	≥32	HZO.RC.M	0.35 × TDA + 2.88
		<32	HZO.RC.L	0.55 × TDA + 6.88
		≤–5	HZO.RC.I	0.7 × TDA + 8.74
	Vertical Closed Transparent (VCT)	≥32	VCT.RC.M	0.15 × TDA + 1.95
		<32	VCT.RC.L	0.49 × TDA + 2.61
		≤–5	VCT.RC.I	0.58 × TDA + 3.05
	Horizontal Closed Transparent (HCT)	≥32	HCT.RC.M	0.16 × TDA + 0.13
		<32	HCT.RC.L	0.34 × TDA + 0.26
		≤–5	HCT.RC.I	0.4 × TDA + 0.31
	Vertical Closed Solid (“VCS”)	≥32	VCS.RC.M	0.1 × V + 0.26
		<32	VCS.RC.L	0.21 × V + 0.54

TABLE IV.1—CURRENT CRE EQUIPMENT CLASSES—Continued

Condensing unit configuration	Equipment family	Operating temperature (°F)	Equipment class designation	Maximum daily energy consumption (kilowatt-hours per day)*
Self-Contained (SC)	Horizontal Closed Solid (HCS)	≤ -5	VCS.RC.I	$0.25 \times V + 0.63$
		≥ 32	HCS.RC.M	$0.1 \times V + 0.26$
		< 32	HCS.RC.L	$0.21 \times V + 0.54$
	Service Over Counter (SOC)	≤ -5	HCS.RC.I	$0.25 \times V + 0.63$
		≥ 32	SOC.RC.M	$0.44 \times TDA + 0.11$
		< 32	SOC.RC.L	$0.93 \times TDA + 0.22$
	Vertical Open (VOP)	≤ -5	SOC.RC.I	$1.09 \times TDA + 0.26$
		≥ 32	VOP.SC.M	$1.69 \times TDA + 4.71$
		< 32	VOP.SC.L	$4.25 \times TDA + 11.82$
	Semivertical Open (SVO)	≤ -5	VOP.SC.I	$5.4 \times TDA + 15.02$
		≥ 32	SVO.SC.M	$1.7 \times TDA + 4.59$
		< 32	SVO.SC.L	$4.26 \times TDA + 11.51$
	Horizontal Open (HZO)	≤ -5	SVO.SC.I	$5.41 \times TDA + 14.63$
		≥ 32	HZO.SC.M	$0.72 \times TDA + 5.55$
		< 32	HZO.SC.L	$1.9 \times TDA + 7.08$
	Vertical Closed Transparent (VCT)	≤ -5	HZO.SC.I	$2.42 \times TDA + 9$
		≥ 32	VCT.SC.M	$0.1 \times V + 0.86$
		< 32	VCT.SC.L	$0.29 \times V + 2.95$
	Vertical Closed Solid (VCS)	≤ -5	VCT.SC.I	$0.62 \times TDA + 3.29$
		≥ 32	VCS.SC.M	$0.05 \times V + 1.36$
		< 32	VCS.SC.L	$0.22 \times V + 1.38$
	Horizontal Closed Transparent (HCT)	≤ -5	VCS.SC.I	$0.34 \times V + 0.88$
		≥ 32	HCT.SC.M	$0.06 \times V + 0.37$
		< 32	HCT.SC.L	$0.08 \times V + 1.23$
	Horizontal Closed Solid (HCS)	≤ -5	HCT.SC.I	$0.56 \times TDA + 0.43$
		≥ 32	HCS.SC.M	$0.05 \times V + 0.91$
		< 32	HCS.SC.L	$0.06 \times V + 1.12$
	Service Over Counter (SOC)	≤ -5	HCS.SC.I	$0.34 \times V + 0.88$
		≥ 32	SOC.SC.M	$0.52 \times TDA + 1$
		< 32	SOC.SC.L	$1.1 \times TDA + 2.1$
	Pull-Down (PD)	≤ -5	SOC.SC.I	$1.53 \times TDA + 0.36$
		≥ 32	PD.SC.M	$0.11 \times V + 0.81$

*The term “V” means the chilled or frozen compartment volume (ft³) as defined in the Association of Home Appliance Manufacturers (“AHAM”) Standard HRF 1–2008. The term “TDA” means the total display area (ft²) of the case, as defined in Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) Standard 1200–2006.

b. New Definitions

In the June 2022 Preliminary TSD, DOE sought comment on whether updates to the existing equipment class structure are appropriate. In response, ITW commented that DOE failed to recognize that manufacturers might use other options to produce cabinets with increased heat loads due to their physical features (other than those required by a simple reach-in refrigerator), citing the following applications as examples: (1) pass-through refrigerators—cabinets with doors on both sides, providing access to stored items from either side; (2) roll-in refrigerators—cabinets with ramps and door sweeps that allow for loading of bakery carts; and (3) roll-through refrigerators—cabinets with ramps and door sweeps on both sides that allow for bakery carts to move in and out from one side to the other. (ITW, No. 41 at p. 33)

NAFEM stated that it and other commenters recommended separating forced-air and cold-wall refrigeration systems into different categories in response to the July 2021 RFI, yet it appeared that DOE deferred making a decision until a future proposed rule. (NAFEM, No. 40 at p. 3)

Continental commented that DOE should provide separate equipment classes and standard levels to segregate forced-air from cold-wall models, as well as roll-in from reach-in models, and pass-through from non-pass-through models, because these equipment types have differentiating characteristics that impact energy consumption, and separate energy standard levels are needed to avoid weighting standards in an unfair manner. (Continental, No. 38 at p. 2)

In response to commenter’s suggestions and after a review of similar terms defined by the California Code of

Regulations,²⁸ DOE is proposing to define the terms “cold-wall evaporator,” “forced-air evaporator,” “pass-through doors,” “roll-in door,” “roll-through doors,” and “sliding door” as follows:

Cold-wall evaporator means an evaporator that comprises a portion or all of the commercial refrigerator, freezer, and refrigerator freezer cabinet’s interior surface that transfers heat through means other than fan-forced convection.

Forced-air evaporator means an evaporator that employs the use of fan-forced convection to transfer heat within the commercial refrigerator, freezer, and refrigerator freezer cabinet.

²⁸ See [https://govt.westlaw.com/calregs/Document/I7AE76FC19E3011EDA9D5EB8195EB4110?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhpc=1](https://govt.westlaw.com/calregs/Document/I7AE76FC19E3011EDA9D5EB8195EB4110?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhpc=1).

Pass-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator freezer.

Roll-in door means a door that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into the commercial refrigerator, freezer, and refrigerator freezer.

Roll-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator freezer, that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into and through the commercial refrigerator, freezer, and refrigerator freezer.

Sliding door means a door that opens when a portion of the door moves in a direction generally parallel to its surface.

In addition to proposing to define the terms “cold-wall evaporator,” “forced-air evaporator,” “pass-through doors,” “roll-in door,” “roll-through doors,” and “sliding door,” DOE is proposing to allow certain equipment classes that contain CRE with forced-air evaporators, CRE with pass-through doors, CRE with roll-in doors, CRE with roll-through doors, and CRE with sliding doors to use a higher amount of energy use than the proposed standards, if the standard has been proposed to be amended for an equipment class, while also complying with EPCA’s “anti-backsliding” provision. This proposal recognizes the unique utility and different energy use characteristics of certain types of CRE. DOE discusses these unique utility and different energy use characteristics in further detail in section IV.C.1.a.

DOE has also reviewed the current definitions for CRE at 10 CFR 431.62 and is proposing to revise the definition for “rating temperature” to update the reference to the required integrated average temperature (“IAT”) or lowest application product temperature (“LAPT”), as applicable, as follows:

Rating temperature means the integrated average temperature a unit must maintain during testing, as determined in accordance with section 2.1. or section 2.2. of appendix B to subpart C of part 431, as applicable.

DOE requests comment on the proposed definitions for “cold-wall evaporator,” “forced-air evaporator,” “pass-through doors,” “roll-in door,” “roll-through doors,” “sliding door,” and “rating temperature.”

c. Equipment Class Modifications

In the June 2022 Preliminary TSD, DOE had initially determined that additional equipment classes may be appropriate to address certain CRE available on the market. Specifically, DOE initially determined to split several commercial refrigerator equipment classes and establish separate classes for high-temperature refrigerators. Also, DOE initially determined to establish standards for chef bases or griddle stands with operating temperatures of $\geq 32^\circ\text{F}$ or $< 32^\circ\text{F}$ (10 CFR 431.66(f) currently excludes chef bases or griddle stands from energy conservation standards). See chapter 3 of the June 2022 Preliminary TSD for additional details.

In the September 2023 Test Procedure Final Rule, DOE established and amended definitions and test procedures for high-temperature refrigerators, medium-temperature refrigerators, and chef bases or griddle stands. 88 FR 66152, 66154–66155. Specifically, DOE established definitions for “high-temperature refrigerators” and “medium-temperature refrigerators,” amended the definition for “chef bases or griddle stands,” and incorporated by reference AHRI Standard 1200–2023 (I–P), which provides a IAT of $55^\circ\text{F} \pm 2.0^\circ\text{F}$ for which high-temperature refrigerators may be tested. *Id.* DOE also established a definition for “low-temperature freezers” and amended the definition for “ice-cream freezers.” *Id.* The newly established and amended definitions in the test procedure final rule are as follows.

Chef base or griddle stand means commercial refrigeration equipment that has a maximum height of 32 inches, including any legs or casters, and that is designed and marketed for the express purpose of having a griddle or other cooking appliance placed on top of it that is capable of reaching temperatures hot enough to cook food.

High-temperature refrigerator means a commercial refrigerator that is not capable of an operating temperature at or below 40.0°F .

Medium-temperature refrigerator means a commercial refrigerator that is capable of an operating temperature at or below 40.0°F .

Ice-cream freezer means:

(1) Prior to the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below -5.0°F and that the manufacturer designs, markets,

or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts; or

(2) Upon the compliance date(s) of any amended energy conservation standard(s) issued after January 1, 2023 for ice-cream freezers, a commercial freezer that is capable of an operating temperature at or below -13.0°F and that the manufacturer designs, markets, or intends specifically for the storing, displaying, or dispensing of ice cream or other frozen desserts.

Low-temperature freezer means a commercial freezer that is not an ice-cream freezer.

88 FR 66152, 66223–66224.

Based on CRE models certified to DOE’s Compliance Certification Management System (“CCMS”) under the LAPT designation for commercial refrigerators, DOE has tentatively determined that high-temperature refrigerators can be categorized under the self-contained and remote condensing unit configurations and under the vertical closed transparent (“VCT”), vertical closed solid (“VCS”), service over counter (“SOC”), vertical open (“VOP”), semi-vertical open (“SVO”), and horizontal open (“HZO”) equipment families. For these equipment families with high-temperature equipment, DOE proposes to sub-categorize them as high-temperature refrigerators (operating temperature greater than 40.0°F) and medium-temperature refrigerators (operating temperature greater than or equal to 32.0°F and less than or equal to 40.0°F). DOE proposes to maintain the categorization of commercial refrigerator (operating temperature greater than or equal to 32.0°F) for the remaining equipment families (*i.e.*, any horizontal closed transparent (“HCT”), horizontal closed solid (“HCS”), chef bases (“CB”), or pull-down (“PD”) equipment that operates above 40°F , if commercialized, would be considered a “commercial refrigerator” and required to comply with the “medium-temperature refrigerator” standard when tested at the LAPT). For this NOPR, DOE has directly analyzed high temperature refrigerators in the self-contained condensing unit configuration for the VCT and VCS equipment families.

DOE has also tentatively determined that chef bases or griddle stands can be categorized under the self-contained condensing unit configuration and the $\geq 32^\circ\text{F}$ or $< 32^\circ\text{F}$ operating temperatures (*i.e.*, commercial refrigerator or low-temperature freezer, respectively).

Accordingly, DOE is considering potential equipment classes for high-temperature refrigerators and chef bases or griddle stands and is proposing potential equipment class structure modifications as presented in table IV.2.

TABLE IV.2—PROPOSED EQUIPMENT CLASSES AND EQUIPMENT CLASS MODIFICATIONS

Condensing unit configuration	Equipment family	Rating temperature **	Operating temperature (°F)	Equipment class designation
Self-Contained (SC)	Vertical Open (VOP)	HR (55 °F)	x >40	VOP.SC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VOP.SC.M
		LF (0 °F)	x <32	VOP.SC.L
	Semivertical Open (SVO)	IF (−15 °F)	x ≤ −13	VOP.SC.I
		HR (55 °F)	x >40	SVO.SC.H *
		MR (38 °F)	40 ≥ x ≥ 32	SVO.SC.M
	Horizontal Open (HZO)	LF (0 °F)	x <32	SVO.SC.L
		IF (−15 °F)	x ≤ −13	SVO.SC.I
		HR (55 °F)	x >40	HZO.SC.H *
	Vertical Closed Transparent (VCT)	MR (38 °F)	40 ≥ x ≥ 32	HZO.SC.M
		LF (0 °F)	x <32	HZO.SC.L
		IF (−15 °F)	x ≤ −13	HZO.SC.I
	Vertical Closed Solid (VCS)	HR (55 °F)	x >40	VCT.SC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VCT.SC.M
		LF (0 °F)	x <32	VCT.SC.L
	Horizontal Closed Transparent (HCT)	IF (−15 °F)	x ≤ −13	VCT.SC.I
		HR (55 °F)	x >40	VCS.SC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VCS.SC.M
	Horizontal Closed Solid (HCS)	LF (0 °F)	x <32	VCS.SC.L
		IF (−15 °F)	x ≤ −13	VCS.SC.I
		CR (38 °F)	x ≥ 32	HCT.SC.M
	Service Over Counter (SOC)	LF (0 °F)	x <32	HCT.SC.L
		IF (−15 °F)	x ≤ −13	HCT.SC.I
		CR (38 °F)	x ≥ 32	HCS.SC.M
	Pull-Down (PD)	LF (0 °F)	x <32	HCS.SC.L
		IF (−15 °F)	x ≤ −13	HCS.SC.I
		CR (38 °F)	x ≥ 32	SOC.SC.H *
	Chef Base (CB)	MR (38 °F)	40 ≥ x ≥ 32	SOC.SC.M
		LF (0 °F)	x <32	SOC.SC.L
		IF (−15 °F)	x ≤ −13	SOC.SC.I
Remote Condensing (RC)	Vertical Open (VOP)	CR (38 °F)	x ≥ 32	PD.SC.M
		LF (0 °F)	x <32	CB.SC.M *
		IF (−15 °F)	x ≤ −13	CB.SC.L *
	Semivertical Open (SVO)	HR (55 °F)	x >40	VOP.RC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VOP.RC.M
		LF (0 °F)	x <32	VOP.RC.L
	Horizontal Open (HZO)	IF (−15 °F)	x ≤ −13	VOP.RC.I
		HR (55 °F)	x >40	SVO.RC.H *
		MR (38 °F)	40 ≥ x ≥ 32	SVO.RC.M
	Vertical Closed Transparent (VCT)	LF (0 °F)	x <32	SVO.RC.L
		IF (−15 °F)	x ≤ −13	SVO.RC.I
		HR (55 °F)	x >40	HZO.RC.H *
	Horizontal Closed Transparent (HCT)	MR (38 °F)	40 ≥ x ≥ 32	HZO.RC.M
		LF (0 °F)	x <32	HZO.RC.L
		IF (−15 °F)	x ≤ −13	HZO.RC.I
	Vertical Closed Solid (VCS)	HR (55 °F)	x >40	VCT.RC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VCT.RC.M
		LF (0 °F)	x <32	VCT.RC.L
	Horizontal Closed Solid (HCS)	IF (−15 °F)	x ≤ −13	VCT.RC.I
		CR (38 °F)	x ≥ 32	HCT.RC.M
		LF (0 °F)	x <32	HCT.RC.L
	Service Over Counter (SOC)	IF (−15 °F)	x ≤ −13	HCT.RC.I
		HR (55 °F)	x >40	VCS.RC.H *
		MR (38 °F)	40 ≥ x ≥ 32	VCS.RC.M
	Chef Base (CB)	LF (0 °F)	x <32	VCS.RC.L
		IF (−15 °F)	x ≤ −13	VCS.RC.I
		CR (38 °F)	x ≥ 32	HCS.RC.M
	Pull-Down (PD)	LF (0 °F)	x <32	HCS.RC.L
		IF (−15 °F)	x ≤ −13	HCS.RC.I
		CR (38 °F)	x ≥ 32	SOC.RC.H *
	Chef Base (CB)	MR (38 °F)	40 ≥ x ≥ 32	SOC.RC.M
		LF (0 °F)	x <32	SOC.RC.L
		IF (−15 °F)	x ≤ −13	SOC.RC.I
	Service Over Counter (SOC)	CR (38 °F)	x ≥ 32	CB.RC.M *
		LF (0 °F)	x <32	CB.RC.L *
		IF (−15 °F)	x ≤ −13	CB.RC.L *

* Proposed new equipment class.

** HR—High-Temperature Refrigerator.
 LF—Low Temperature Freezer.
 MR—Medium-Temperature Refrigerator.
 IF—Ice-Cream Freezer.
 CR—Commercial Refrigerator.

DOE received several comments in response to the June 2022 Preliminary Analysis regarding the amendments to the equipment classes for CRE.

Equipment Classes With Newly Proposed Standards

NEEA supported DOE's proposed definitions in the June 2022 CRE Test Procedure NOPR for blast chillers and blast freezers, buffet tables and preparation tables, and high-temperature CRE, noting that these definitions allowed consideration of potential standards, categorization of equipment classes, and testing of the equipment separate from other CRE. (NEEA, No. 47 at p. 2)

The Joint Commenters supported DOE's consideration of potential standards for additional equipment categories. (Joint Commenters, No. 39 at p. 1) The Joint Commenters stated that DOE found cost-effective potential energy savings for chef bases/griddle stands and high-temperature refrigerators in the June 2022 Preliminary TSD and commented that they support DOE setting standards for these equipment classes. (*Id.*)

The CA IOUs commented DOE for proposing to expand the scope of the energy conservation standards for CRE to include chef bases or griddle stands and high-temperature refrigeration. (CA IOUs, No. 43 at p. 1) The CA IOUs stated that these added product classes constitute a significant inventory of equipment with a substantial cumulative energy load that were previously outside the scope of DOE's regulation. (*Id.* at pp. 1–2)

AHRI commented that it has no objection to the added equipment classes detailed in the June 2022 Preliminary TSD. (AHRI, No. 46 at p. 2) However, Continental recommended that DOE delay inclusion of any new categories until applicable industry standard test procedures are published and have been thoroughly evaluated. (Continental, No. 38 at p. 2)

DOE has proposed standards for new equipment classes (*e.g.*, chef bases, and high-temperature refrigerators) in this NOPR, as supported by commenters. And as described in the September 2023 Test Procedure Final Rule, DOE has incorporated by reference the latest versions of ASHRAE 72 and AHRI 1200, which were evaluated by each respective committee and subject to public reviews, in the CRE test

procedure. 88 FR 66152. In addition, based on the September 2023 Test Procedure Final Rule, chef bases or griddle stands must be tested at a dry-bulb temperature of 86.0 °F and wet-bulb temperature of 73.7 °F. 88 FR 66152, 66203. Therefore, DOE has considered higher ambient temperature conditions in the analysis of chef bases or griddle stands compared to other CRE, which are tested at a dry-bulb temperature of 75.2 °F and wet-bulb temperature of 64.4 °F. See chapter 5 of the NOPR TSD for additional information.

Equipment Classes Without Proposed Standards

NEEA recommended that DOE analyze the new equipment classes and consider adopting efficiency standards that would better reflect the specific energy consumption of equipment subclasses, resulting in more significant energy savings. (NEEA, No. 47 at p. 4) NEEA commented that DOE had analyzed two of the four new product classes and, as was shown in the CRE June 2022 Preliminary TSD analysis, energy conservation standards were viable for high-temperature CRE and chef bases and griddle stands. (*Id.*) NEEA commented that for vertical closed transparent self-contained high temperature ("VCT.SC.H"), vertical closed solid self-contained high temperature ("VCS.SC.H"), and chef bases self-contained low temperature ("CB.SC.L"), the average life-cost savings ranged from \$300–\$500 at EL 3, presenting justification of the energy and cost savings for these equipment classes. (*Id.*) NEEA added that DOE should conduct similar analyses on blast chillers and buffet tables, citing DOE's test procedures for these classes as key to allowing data collection. (*Id.* at p. 4) NEEA commented that DOE's analysis of high-temperature refrigerators and chef bases indicated that additional significant savings would likely be available from these products. (*Id.*)

Similarly, the Joint Commenters commented that DOE stated DOE lacked sufficient information to fully analyze buffet/preparation tables and blast chillers/freezers in the June 2022 Preliminary TSD, but the Joint Commenters noted that the California Energy Commission ("CEC") Modernized Appliance Efficiency Database System ("MAEDbS") includes

over 100 buffet/preparation tables with a broad range of energy usage. (Joint Commenters, No. 39 at p. 1) The Joint Commenters requested that DOE further investigate the energy usage and savings potential for these products. (*Id.*)

However, Continental agreed with DOE that a preliminary analysis of energy consumption for buffet tables and preparation tables is not appropriate until a standard test procedure is established for these equipment types. (Continental, No. 38 at p. 2).

Consistent with comments from NEEA and based on the new rating temperature in the September 2023 Test Procedure Final Rule for high-temperature refrigerators, DOE is proposing to amend the energy conservation standards for high-temperature refrigerators and to establish energy conservation standards for chef bases or griddle stands in this NOPR. See table IV.2.

With respect to the comments from NEEA and the Joint Commenters regarding blast chillers and blast freezers, DOE notes that it lacks sufficient data and information regarding blast chillers and blast freezer performance, and related design options, for units tested via the DOE test procedure. As stated in the September 2023 Test Procedure Final Rule, blast chillers and blast freezers are designed for "rapid temperature pull-down" capable of reducing the internal temperature from 135 °F to 40 °F within a period of 4 hours. 88 FR 66152, 66189. Therefore, in this NOPR, DOE is not currently able to model expected performance of this equipment because the established test procedure is significantly different from the test procedure applicable to other CRE categories, which are intended for "holding temperature application". Due to a lack of data and information regarding performance of blast chillers and blast freezers, DOE has not conducted an analysis of potential energy conservation standards for these equipment categories.

DOE requests comment on blast chiller or freezer design options, design specifications, and energy consumption data tested per the DOE test procedure located in appendix D of 10 CFR 431.64.

With respect to the comments from NEEA and the Joint Commenters regarding buffet tables and preparation tables, while DOE acknowledges that

CEC's MAEDbS database contains data for buffet/preparation tables, DOE notes that title 20 of the California Code of Regulations requires refrigerated buffet/preparation tables to follow the ANSI/ASTM F2143–01 test method.²⁹ This test method has been revised several times, with ASTM F2143–16 being the most recent version. In the September 2023 Test Procedure Final Rule, DOE stated that ASTM F2143–16 cannot be referenced as a standalone test method but determined the approach based on ASTM F2143–16 with additional requirements is representative for buffet/preparation tables. 88 FR 66152, 66175. Therefore, in this NOPR, DOE is not able to model expected performance of this equipment at this time because the established test procedure is significantly different from the test procedure applicable to other CRE categories, and from the test procedure used to measure energy consumption for the CEC's MAEDbS. Due to a lack of data and information regarding performance and related design options of refrigerated buffet/preparation tables, DOE has not conducted an analysis of potential energy conservation standards for these equipment categories.

DOE requests comment on refrigerated buffet/preparation table design options, design specifications, and energy consumption data tested per the DOE test procedure located in appendix C of 10 CFR 431.64.

Customer Order Storage Cabinets

The CA IOUs supported creating a separate equipment class for customer-order refrigerated storage lockers. (CA IOUs, No. 43 at p. 10) The CA IOUs commented that they expect the refrigerated storage locker market to increase as grocery delivery and pick up continues to be a growing segment of grocery sales. (*Id.*) The CA IOUs stated that they support aggregating the maximum daily energy consumption values for all compartments in a refrigerated storage locker according to 10 CFR 431.66(e)(2). (*Id.*) The CA IOUs also pointed out that “temperature controlled pick up lockers” can be refrigerated lockers; however, some of these models can be either refrigerated or heated or neither. (*Id.*)

The CA IOUs recommended that DOE analyze the individual refrigerator, freezer, and refrigerator/freezer compartments in customer-order

refrigerated storage lockers as a separate equipment family as noted in the CA IOUs comments on DOE's July 2021 CRE Test Procedure RFI. (*Id.*) The CA IOUs highlighted the Traulsen waiver³⁰ to show that these compartments will have distinct door-opening conditions compared to the CRE equipment families. (*Id.*)

In response to the CA IOUs comments, DOE has not conducted an analysis specifically for customer order storage cabinets in this NOPR.³¹ DOE has analyzed a representative volume for the VCS equipment families of which customer order storage cabinets are typically included. In the September 2023 Test Procedure Final Rule, DOE provides a discussion of customer order storage cabinets and determination to adopt a test procedure based on existing test procedure waivers. 88 FR 66152, 66211–66213.

Comments on Specific Equipment Classes

The Joint Commenters recommended that DOE analyze additional equipment classes and stated that DOE did not directly analyze the vertical closed solid remote condensing medium temperature (“VCS.RC.M”), vertical closed solid remote condensing low temperature (“VCS.RC.L”), horizontal closed transparent remote condensing medium temperature (“HCT.RC.M”), or horizontal closed transparent remote condensing low temperature (“HCT.RC.L”) equipment classes in the June 2022 Preliminary TSD. (Joint Commenters, No. 39 at p. 2) The Joint Commenters commented that the number of models for each of these classes in the CCD suggests their market share could be larger than the estimated volume of shipments for these classes in the analysis for the March 2014 Final Rule. (*Id.*) The Joint Commenters stated that there are nearly 500 VCS.RC.M models certified in the CCD, and there are more HCT.RC.M models in the CCD than horizontal closed transparent self-contained medium temperature (“HCT.SC.M”), an equipment class that was analyzed by DOE in the June 2022 Preliminary TSD. (*Id.*) The Joint Commenters commented that, based on these data, the market share of these equipment classes may be larger than estimated, and the Joint Commenters

encouraged DOE to analyze these additional equipment classes. (*Id.*)

AHRI asked that DOE clarify whether DOE removed the vertical self-contained class from the June 2022 Preliminary TSD. (AHRI, No. 46 at p. 2) And Zero Zone commented that it did not see any evaluation of solid-door remote commercial refrigerators and inquired whether DOE is dropping that equipment class or has no plans to change the energy requirements. (Zero Zone, No. 44 at p. 5)

With respect to the comments from the Joint Commenters, AHRI, and Zero Zone, DOE notes that the equipment classes mentioned by the Joint Commenters were not directly analyzed as primary equipment classes in the June 2022 Preliminary Analysis, but are analyzed as secondary equipment classes in this NOPR using DOE's primary to secondary equipment class multipliers. See chapter 5 of the NOPR TSD for additional details on secondary equipment classes. Additionally, DOE notes that in the June 2022 Preliminary Analysis, DOE analyzed vertical closed solid, self contained equipment, as well as other vertical self-contained equipment (e.g., vertical open self-contained medium temperature (“VOP.SC.M”) and vertical closed transparent self-contained medium temperature (“VCT.SC.M”). See table 5.8.1 of the June 2022 Preliminary TSD for a full list of primary equipment classes DOE analyzed in the June 2022 Preliminary Analysis.

AHRI commented that breaking equipment classes into smaller (under 30 cubic feet) and larger units (over 30 cubic feet) could be beneficial. (AHRI, No. 46 at p. 7) Additionally, NAMA commented that DOE appeared to have overlooked or not fully recognized the existence of smaller refrigerated single- and double-door beverage (and food) coolers. (NAMA, No. 37 at p. 5) NAMA stated that energy efficiency analyses of larger (e.g., 60 cubic feet) units may not be applicable to smaller (e.g., 24 cubic feet) units. (*Id.*) NAMA recommended that, for purposes of DOE analysis, units under 30 cubic feet should be considered differently from those over 30 cubic feet in refrigerated volume. (*Id.*)

In response to the June 2021 Test Procedure RFI, True Manufacturing Company, Inc. (“True”) commented that there are examples where the ice-cream freezer maximum allowable energy consumption is less than for an equivalent commercial freezer.³² (Docket No. EERE–2017–BT–TP–0008,

³⁰ CA IOUs provided the footnote reference 83 FR 46148 for the granted waiver.

³¹ DOE defines customer order storage cabinet at § 431.62 to mean a commercial refrigerator, freezer, or refrigerator-freezer that stores customer orders and includes individual, secured compartments with doors that are accessible to customers for order retrieval.

³² See www.regulations.gov/comment/EERE-2017-BT-TP-0008-0004.

²⁹ See table A–1 in 20 CCR section 1604.a.2 located at [https://govt.westlaw.com/calregs/Document/ID5812C41DABD11ED852BC9A091C0DD8F?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/ID5812C41DABD11ED852BC9A091C0DD8F?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

True, No. 4 at p. 3) True provided three examples of common VCT.SC.L CREs found in the marketplace where the maximum DOE energy allowance for the ice-cream freezer is less than that of the equivalent commercial freezer. (*Id.*) True also commented that when comparing the VCS.SC.I and VCS.SC.L formulas, for cabinets with a volume of 4 cubic feet or less, the energy use allowance for the ice-cream freezer is less than for the equivalent commercial freezer. (*Id.*)

Additionally, in response to the July 2021 RFI, Glastender, Inc. (“Glastender”) provided a chart and commented that the energy allowance for VCT.SC.M CRE is less than the energy allowance for VCS.SC.M CRE when the refrigerated volume is less than 10 cubic feet. (Glastender, No. 4 at p. 1). Glastender commented that it believed the requirement curves were generated from primarily larger volume models and smaller volume refrigerators need to be considered when generating new curves. (*Id.*)

In response to comments from AHRI and NAMA, DOE is maintaining the current equipment class structure in this NOPR, except for the new equipment classes which are proposed and discussed in section IV.A.1.c of this document. DOE considers all volumes and TDAs when developing the proposed standards in this NOPR in addition to the representative volume or TDA for each directly analyzed equipment class. Based on market research and feedback received during manufacturer interviews, DOE expects the use of sliding and pass-through doors represent equipment utilities that have unique energy use characteristics that differentiate CRE in the VCT.SC.M equipment class and that beverage coolers are a common type of equipment in the VCT.SC.M equipment class that use sliding and pass-through doors. Therefore, based on market research and feedback received during manufacturer interviews, DOE has proposed separate energy use equations based on an energy consumption multiplier for CRE with sliding and pass-through doors.

In response to comments from AHRI, NAMA, True, and Glastender, DOE considered all volumes and TDAs when developing the proposed standards in this NOPR in addition to the representative volume or TDA for each directly analyzed equipment class. When developing the proposed standards in this NOPR, DOE generally applied the energy use reduction percentage selected in section V.C of this document to the baseline energy use equation’s slope and intercept. However, in three directly analyzed

equipment classes, VCT.SC.M, VCS.SC.I, and HCT.SC.I, DOE has tentatively determined that, based on the efficiency distribution of the market across the equipment classes, additional consideration is necessary. For these three classes, DOE maintained the current standard equation intercept and calculated a slope based on the current intercept and the proposed energy use level at the representative volume or TDA. This approach addresses the standard line crossover that True and Glastender mentioned in their comments and better represents the energy use characteristics of CRE at volumes and TDAs that are smaller than the representative volume or TDA for these three classes. Additionally, DOE reviewed the proposed standard for VCT.SC.I and VCT.SC.L and observed that the standard lines do not have the crossover that True mentioned in its comment.

See section IV.C.1 of this document and chapter 5 of the NOPR TSD for additional details.

The Joint Commenters recommended that DOE eliminate the equipment class for pull-down CREs. (Joint Commenters, No. 39 at p. 2) The Joint Commenters stated that while there are currently no pull-down models certified in DOE’s CCD, the Joint Commenters are concerned that models could be certified as pull-down CRE in the future in order to be subject to a less-stringent standard. (*Id.*)

In response to the Joint Commenters, DOE notes that the “pull-down temperature application” is defined in 42 U.S.C. 6311(9)(d) and the equipment class was established by the Energy Policy Act of 2005 (Pub. L. 109–58).³³ In the September 2023 Test Procedure Final Rule, DOE established verification provisions for pull-down temperature applications based on the EPCA definition, which are intended to ensure CRE are certified correctly as pull-down temperature applications. 88 FR 66152, 66187–66189. Therefore, DOE is not proposing to eliminate the equipment class for pull-down CREs in this NOPR.

Equipment Rating

The CA IOUs recommended changing the key metric for service over the counter (“SOC”) refrigeration from total display area (“TDA”) to either refrigerated volume or refrigerated floor area. (CA IOUs, No. 43 at pp. 9–10). The CA IOUs commented that the current energy conservation standard for SOC is based on TDA, which incentivizes the

use of more glass to increase the TDA and the corresponding maximum daily energy consumption. (*Id.* at p. 9) The CA IOUs stated that basing the energy conservation standard for SOC equipment on refrigerated volume would ensure that any increases in an SOC unit’s maximum allowable energy consumption is directly linked to an increase in the equipment’s useful holding capacity. (*Id.*) The CA IOUs commented that this change would ensure that manufacturers wanting to increase TDA would be incentivized to use glass with better thermal insulation properties. (*Id.*) The CA IOUs commented also that switching to a refrigerated volume metric would also be more consistent with other closed refrigeration categories with display functionality, such as refrigerators with glass doors. (*Id.*) The CA IOUs stated that the burden of shifting to refrigerated volume as a metric could be minimized by allowing either physical measurement or measurement based on a diagram or computer-aided design (“CAD”) drawing. (*Id.* at p. 10) The CA IOUs added that an alternative metric for deli cases without shelving could also be refrigerated floor area, which would be the available surface area for product, although the CA IOUs noted that most SOC refrigerators are sold with shelving that can be added or removed depending on food product being displayed. (*Id.*)

However, in response to the July 2021 RFI, other commenters indicated that TDA is the appropriate metric for the respective equipment classes, and the industry has adapted to the use of TDA or volume and that no change is necessary (see chapter 2 of the June 2022 Preliminary TSD for additional information). Therefore, in this NOPR, DOE has not evaluated revising the capacity metrics for any equipment classes.

The CA IOUs commented that they support the proposal to rate equipment capable of operating at temperatures of multiple equipment classes at all relevant temperature conditions. (CA IOUs, No. 43 at p. 8–9)

Consistent with the CA IOUs comment, in the September 2023 Test Procedure Final Rule, DOE specified in 10 CFR 429.42 that basic models of CRE that operate in multiple equipment classes must be certified and comply with the energy conservation standards for each applicable equipment class. 88 FR 66152, 66162.

2. CRE Market

In response to the June 2022 Preliminary Analysis, DOE received

³³ See 119 STAT. 639 at <https://www.govinfo.gov/content/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf>.

several comments regarding the CRE market.

NAMA commented that it was not listed in the proposed regulation or list of manufacturers. (NAMA, No. 37 at p. 4) NAMA added that the names of CRE manufacturers represented by NAMA, which were filed in the DOE's CCMS, were not mentioned. (*Id.*)

In response to this comment from NAMA, for this NOPR, DOE updated its assessment of manufacturer trade groups to include NAMA and reviewed the list of CRE manufacturers based on the list of supporters on NAMA's website.³⁴ See chapter 3 of the NOPR TSD for additional information regarding CRE original equipment manufacturers ("OEMs") and manufacturer trade groups.

Continental commented that relying on manufacturer model counts in the CCD is not an accurate way of approximating company market share and stated that model counts in DOE's CCD reflect the variety of models offered, but do not represent the sales or market share of a company. (Continental, No. 38, p. 2)

In the June 2022 Preliminary TSD, DOE used manufacturer model counts to identify key CRE OEMs operating in the United States. DOE presented an abridged list of OEMs with more than 1-percent share of basic model listings in chapter 3 of the June 2022 Preliminary TSD. DOE understands that model counts do not reflect company market shares. For this NOPR, DOE conducted confidential manufacturer interviews. During these interviews, DOE asked manufacturers about their estimated CRE market share, annual shipments by equipment class, and the estimated market shares of other CRE manufacturers. DOE used the information from confidential interviews, data from the shipments analysis, and model listings from CCD to estimate manufacturer market shares, which were then used to weight certain inputs used in the MIA (*e.g.*, industry financial parameters, manufacturer markups). DOE does not present these company-specific market share estimates in the NOPR TSD chapter 3 as the information is protected under nondisclosure agreements ("NDAs"). See chapter 3 of the NOPR TSD for additional details on the CRE market and manufacturers.

DOE requests comment on publicly available market data on CRE manufacturers or identification of any

CRE manufacturers with large market shares not identified in Chapter 3 of the NOPR TSD.

3. Technology Options

In the preliminary market analysis and technology assessment, DOE identified technology options that would be expected to improve the efficiency of CRE, as measured by the DOE test procedure and shown in table IV.3.

TABLE IV.3—TECHNOLOGY OPTIONS FOR CRE

Insulation:	
	Improved resistivity of insulation (insulation type).
	Increased insulation thickness.
	Vacuum-insulated panels.
Lighting:	
	Higher-efficiency lighting.
	Occupancy Sensors.
Improved transparent doors: *	
	Low-emissivity coatings.*
	Inert gas fill.*
	Vacuum-insulated glass.*
	Additional panes.*
	Anti-sweat heater controls.*
	Anti-fog films.*
	Frame design.*
Compressor:**	
	Improved compressor efficiency.**
	Alternative refrigerants.**
	Variable-speed compressors.**
	Linear compressors.**
Evaporator:	
	Increased surface area.
	Improved evaporator coil design.
	Low-pressure differential evaporator.
Condenser:**	
	Increased surface area.**
	Tube-and-fin enhancements.**
	Microchannel heat exchanger.**
Fans and fan motors:	
	Evaporator fan motors.
	Evaporator fan blades.
	Evaporator fan controls.
	Condenser fan motors.**
	Condenser fan blades.**
	Condenser fan controls.**
Other technologies:	
	Defrost systems.
	Expansion valve improvements.
	Air curtain design.***
	Night curtains.***
	Liquid suction heat exchanger.**

* Only applies to equipment classes with doors.

** Only applies to self-contained equipment classes.

*** Only applies to equipment classes without doors (open equipment classes).

DOE received several comments in response to the June 2022 Preliminary Analysis regarding the technology options.

a. Compressors

NEEA referred to its previous comment to the July 2021 RFI that DOE consider the energy-use impact of

compressor technologies like scroll compressors and variable-speed compressors. (NEEA No. 47 at pp. 4–5) NEEA commented that DOE had expressed agreement with NEEA in the June 2022 Preliminary TSD that variable-speed compressors represented an energy-saving technology and estimated that implementing variable-speed compressors could save 3–38 percent of energy consumption, depending on equipment class. (*Id.* at p. 4) NEEA pointed out that DOE had not tested a model with a variable-speed compressor and encouraged DOE to further research the energy-savings potential of variable-speed compressors in CRE. (*Id.*) NEEA commented that, in the June 2022 Preliminary TSD Table 5.5.1,³⁵ DOE noted propane variable-speed compressors as a design option for a majority of CRE equipment classes. (*Id.*) NEEA encouraged DOE to collect data and consider other equipment classes that could utilize variable-speed compressors to improve the energy-savings potential and common use of this technology option. (*Id.* at pp. 4–5)

Consistent with the preliminary analysis, DOE has included R–290 variable-speed compressors as a technology option in this NOPR. Due to the refrigerant transition in response to the December 2022 EPA NOPR, DOE has analyzed R–290 compressors (single and variable speed) for all self-contained equipment classes. See section IV.C.1 of this document and chapter 5 of the NOPR TSD for additional details on the refrigerant transition and analyzed compressors. Additionally, scroll compressors have not been included as a design option in this NOPR. While DOE has not observed scroll compressors in any directly analyzed models, DOE is aware that scroll compressors may be used on very large, self-contained CRE. Based on market research, DOE observed that fixed-speed scroll compressors have similar efficiencies to hermetic, reciprocating compressors; therefore, DOE has not considered scroll compressors in this analysis.

Continental commented that variable-speed compressors hold promise for reducing energy consumption of self-contained CRE, but the increased technical complexity and related increases in material and service costs have thus far limited use of this technology. (Continental, No. 38 at p. 2) Similarly, AHRI commented that variable-speed compressors do not

³⁴ DOE reviewed the "2022 Annual Dues Donors" accessible at namanow.org/foundation/supporters/ to identify members of NAMA (last accessed March 31, 2023).

³⁵ Technical Support Document: Commercial Refrigeration Equipment: Table 5.5.1 Design Options by Equipment Class. PreTSD CRE 2022. June 2022. <https://www.regulations.gov/document/EERE-2017-BT-STD-0007-0013>.

contribute significantly to energy savings in specific products and present additional technical challenges for servicers. (AHRI, No. 46 at p. 5) Further, AHRI commented that DOE should not assume that equipment employing variable-speed compressors will automatically have an energy-efficiency increase of 15–20 percent and that this design option is more complex and requires more careful analysis. (*Id.*)

To estimate the performance impacts of transitioning to a variable-speed compressor, DOE incorporated the performance data for variable-speed R-290 compressors currently available on the market into DOE's engineering spreadsheet. DOE assumed that variable-speed compressors would operate at the minimum speed under steady-state operation. DOE also assumed that the fan motors would operate during the compressor run time (*i.e.*, the fan motor operating duration would likely increase compared to a single-speed compressor). Overall, DOE estimated a 0.5–25 percent energy consumption reduction when implementing variable-speed compressors, with savings varying depending on equipment class. See chapters 3 and 5 of the NOPR TSD for additional details on variable speed compressors.

b. R-290

NAMA stated that it began evaluating the changes necessary for CRE to utilize lower GWP refrigerants, such as R-290, in 2018, and NAMA pointed out that the ASHRAE 15 standard was changed in the summer of 2020 to allow CRE using up to 114 grams of A-3 refrigerants to be placed in public places and that CRE with A-3 refrigerants began to appear in the U.S. market in the first quarter of 2021. (NAMA, No. 37 at p. 6) NAMA stated that manufacturers had to re-design heat exchangers, use new compressors and expansion valves, and make all switches, electrical components, motors, wiring, connectors, and larger electrical components (*e.g.*, compressors) compliant with “spark-proof connections” to manufacture machines using A-3 refrigerant. (*Id.* at pp. 6–7) NAMA commented that the June 2022 Preliminary TSD did not adequately address this level of re-design using expensive components, nor the re-design of factories to comply with health and safety regulations through greater ventilation, safety sensors, and other measures. (*Id.* at p. 7) NAMA noted that every model, product line, quality assurance facility, factory, warehouse, and service center must be updated to install, warehouse, and service units

with R-290 refrigerant, and only a handful of State and local building codes have been updated to accommodate these changes. (*Id.*) NAMA stated that significant work remains to be done in finalizing these codes, and they are unlikely to be complete before 2026. (*Id.*) NAMA commented that DOE did not address this transition in the June 2022 Preliminary TSD. (*Id.*)

Similarly, AHRI commented that the June 2022 Preliminary TSD cited an example of a transition from an R-134a (ASHRAE Class A1) to an R-290 (propane or an ASHRAE Class A3) compressor as the only required change, but AHRI added that compressors, switches, and other components in the system must also be upgraded to comply with UL60335-2-89 requirements to reduce the risk of ignition. (AHRI, No. 46 at p. 13)

The CA IOUs noted that their comments to the July 2021 RFI stated that since energy conservation standards were last analyzed, the market has developed higher-efficiency compressors, and self-contained CRE has increasingly shifted to R-290. (CA IOUs, No. 43 at pp. 4–6) While the CA IOUs thanked DOE for analyzing these technology advances, they noted that the June 2022 Preliminary TSD analyzes the refrigerant propane as a technology option for nearly all self-contained refrigeration categories except for vertical open self-contained medium temperature (“VOP.SC.M”), semi-vertical self-contained medium temperature (“SVO.SC.M”), and horizontal glass self-contained ice cream (“HCT.SC.I”) categories. (*Id.* at pp. 4–5) The CA IOUs stated that propane had already become an industry standard for self-contained refrigeration equipment, and the CA IOUs recommended considering it as a baseline refrigerant for all self-contained refrigeration categories. (*Id.* at p. 5) The CA IOUs further commented that the June 2022 Preliminary TSD excludes variable-speed compressors as a technology option for almost all categories where it does not consider propane as an option. (*Id.*) The CA IOUs commented that variable-speed compressors can use any refrigerant and are not limited to propane. (*Id.*) The CA IOUs stated that the current market availability of variable-speed compressors that use refrigerants other than propane is limited to compressors above 1 horsepower, and the CA IOUs recommended that DOE work with manufacturer stakeholders to determine future market availability of variable-speed compressors for all refrigerants. (*Id.* at pp. 5–6)

NEEA stated support for DOE's consideration of propane refrigerants as an energy-saving technology option in the technology assessment and engineering analysis for CRE, but NEEA noted that table 5.5.18 in the June 2022 Preliminary TSD showed that DOE had not considered propane as an option for all CRE equipment classes. (NEEA, No. 47 at p. 4) NEEA commented that CRE refrigerants are transitioning from hydrofluorocarbons (“HFC”) refrigerants to alternative options like propane (R-290) and NEEA anticipated an increase in the use of propane in other equipment classes. (*Id.*) NEEA recommended that DOE ensure its analysis take into consideration the current availability of propane products in the product classes not currently considered by DOE as a design option (*e.g.*, VOP.SC.M and SVO.SC.M). (*Id.*) NEEA further recommended DOE anticipate that more products would likely become available with propane refrigerants if the charge limit (currently 150 grams under the EPA's Significant New Alternatives Policy (“SNAP”)) for propane were to increase, as allowed in ASHRAE 15-2022. (*Id.*)

Similarly, the Joint Commenters commented that DOE excluded propane compressors as a design option for some equipment classes due to propane charge limits, but the Joint Commenters further commented that ASHRAE 15 is proposing to increase the charge limits for higher-flammability refrigerants. (Joint Commenters, No. 39 at p. 2) Additionally, the Joint Commenters stated that models are available on the market in some of the equipment classes for which DOE excluded propane technology options, including the VOP.SC.M, SVO.SC.M, and HCT.SC.I categories. (*Id.* at pp. 2–3) The Joint Commenters recommended that DOE consider propane refrigerant for these additional equipment classes. (*Id.* at p. 3)

In the June 2022 Preliminary Analysis, DOE considered only CRE that could meet the 150-gram charge limit for R-290, per the EPA's SNAP regulations.³⁶ Based on the December 2022 EPA NOPR's proposed GWP limits, DOE anticipates EPA will harmonize with UL 60335-2-89 and allow R-290 charge limits of 304g for closed CRE and 494g for open CRE. Therefore, DOE has updated its engineering analysis in the NOPR to analyze R-290 compressors as a technology option for all self-contained CRE. See section IV.C.1 of this

³⁶ See <https://www.govinfo.gov/content/pkg/FR-2015-04-10/pdf/2015-07895.pdf>.

document and chapter 5 of the NOPR TSD for additional information.

Additionally, based on information gathered from interviews, component data, and teardowns, DOE has reevaluated the cost associated with the switch to R-290 on self-contained units. Because DOE has analyzed R-290 as the baseline for all self-contained classes in response to the December 2022 EPA NOPR, the costs associated with additional components necessary to comply with safety standards for R-290 are incorporated into the core case cost.³⁷ See the engineering analysis in section IV.C.1 of this document for more detail on the refrigerant transition.

c. Insulation

AHT commented that the combination of an additional half inch of insulation and vacuum-insulated panels (“VIPs”) does not make sense and should not be included as two cumulative potential savings. (AHT, No. 48 at p. 6)

Based on feedback from manufacturers, DOE has not analyzed increased insulation thickness or VIPs as a design option in this NOPR. See section IV.B.1 of this document and chapters 3 and 4 of the NOPR TSD for additional information.

ITW commented that, in terms of improved resistivity of insulation, some manufacturers have introduced new hydrofluorolefin (“HFO”) low-GWP blowing agents with claims of improved efficiencies and thermal resistivities from 2 to 11 percent compared to the previous typical HFC-245fa blowing agents and that DOE expected that manufacturers had already incorporated these new agents into models currently available on the market. (ITW, No. 41 at p. 25) ITW commented that, in fact, such claims for HFOs were “marketing hype” and without much promised improvement in thermal performance. (*Id.*)

Regarding ITW’s comment on foam blowing agents, DOE calibrated its engineering analysis based on directly analyzed units, and, therefore, DOE expects that the analysis represents the foam blowing agents currently in use for units available on the market.

³⁷ The “core case” consists of components, such as structural members, shelving, wiring, air curtain grilles, and trim, that do not change at higher design option levels. To develop the core case cost, DOE dismantled units available on the market component-by-component to develop a bill of materials and cost model for the core of the refrigerated case. The core case cost is just one component of the overall baseline cost, which takes into account all manufacturer production costs associated with baseline equipment. Therefore, changes in CRE case design due to the transition to R-290 are accounted for in the core case and design option manufacturer production costs.

d. Doors

AHT commented that the best design option to save energy for open CRE is to add transparent doors. (AHT, No. 48 at p. 1) AHT noted that the existing equipment class definitions and corresponding energy conservation standards permit manufacturers that cannot reach the energy limits for closed transparent units to remove the transparent doors, which would then require compliance with the increased energy limits of open units. (*Id.*)

AHRI commented that efficient doors are generally used today, but there remain instances where charge sizes are insufficient and may only be allowed to be increased sufficiently if doors are not present on equipment. (AHRI, No. 46 at p. 13)

Zero Zone commented that a commenter referenced Zero Zone marketing literature for customer preference on certain types of cases with doors in section 2.3.2.5 of the June 2022 Preliminary TSD. (Zero Zone, No. 44 at p. 5). Zero Zone stated that an interview with two grocers is not an exhaustive industry study and also noted that, since that marketing literature was published, Zero Zone has developed an open-case product line. (*Id.*)

With respect to the comment from AHT, AHRI, and Zero Zone, DOE notes that open cases provide distinct utility with respect to features such as unobstructed view and access to product, as well as simplified stocking, cleaning, and maintenance. While DOE understands there are different charge size limitations for refrigerant safety for open and closed CRE, DOE has tentatively determined to not analyze the addition of doors to open cases or the removal of doors on closed cases due to the distinct utility differences between open and closed CRE.

e. Evaporators and Condensers

Continental commented that larger evaporator coils take up more internal space, reducing product storage and utility of the equipment. (Continental, No. 38 at p. 2)

Zero Zone disagreed with DOE’s evaluation of the high-performance coil. (Zero Zone, No. 44 at p. 4) Zero Zone commented that using wavy fins without changing the fin pitch in an application with high-glide refrigerants can lead to a build up of frost and ice across the evaporator coil. (*Id.*) Zero Zone commented additionally that adding another tube row transverse to airflow without a change to the physical dimensions of the coil will compact the tubes, impeding airflow and causing the accumulation of frost and snow. (*Id.*)

Zero Zone stated that it does not believe the addition of either of these design changes to an evaporator coil would create a “high-performance” coil. (*Id.*) Zero Zone commented that if coil design allowed for an increased evaporator temperature, a superheat setting at a value that avoids liquid carryover and compressor damage would be very difficult. (*Id.*) Zero Zone provided a white paper called “High-glide Refrigerants: What’s the Point?” to describe the challenges with superheat settings in door cases. (*Id.*)

Based on feedback from manufacturer interviews and commenters, DOE has not considered increased evaporator or condenser sizes in this NOPR. DOE has tentatively determined that manufacturers have maximized the heat exchanger size without reducing internal storage or increasing the external dimensions of the unit, both of which would impact product utility. In addition, due to refrigerant transition in response to the December 2022 EPA NOPR, DOE has analyzed refrigerants with charge size limitations in this NOPR. Because manufacturers have only partially converted to refrigerants that would be allowed per the December 2022 EPA NOPR, there is still uncertainty in refrigerant charge size, and therefore the evaporator and condenser design, required for all sizes of CRE.

In the June 2022 Preliminary Analysis, DOE analyzed “baseline” and “high efficiency” evaporator and condenser design options. While DOE understands the exact characteristics of the evaporator or condenser may change depending on equipment class, the evaporator and condenser design options normalize the overall conductance-area (“UA”) based on the design load. Based on stakeholder comments, interviews with manufacturers, and CoilDesigner³⁸ simulation, DOE tentatively determined that the “high efficiency” evaporator and condenser design options are representative of current manufacturer designs. Therefore, DOE tentatively determined to analyze the “high efficiency” evaporator and condenser coil as “baseline” in this NOPR and remove the “high efficiency” evaporator and condenser design options in the NOPR. See chapters 3 and 5 of the TSD for additional details.

Zero Zone commented that it believes one CRE manufacturer holds a patent on split-circuit evaporators. (Zero Zone, No. 44 at p. 5) Zero Zone stated that

³⁸ See <https://ots-rd.com/software-development/> for further information on the CoilDesigner software.

DOE suggested manufacturers use this product with propane even though DOE does not include patented design options in rulemakings. (*Id.*) Zero Zone commented that DOE should plan energy levels around the use of A2L refrigerants in large, self-contained appliances instead of focusing on propane. (*Id.*)

Based on a limited review of patents listed for split-circuit evaporators, DOE was able to find several patents for dual circuit evaporators, which are all either expired or abandoned.³⁹ Zero Zone did not specify what is meant by “split-circuit evaporators,” and DOE was unable to locate any patent that would impact CRE manufacturer’s ability to use evaporators with multiple circuits. Additionally, Zero Zone did not specify the manufacturer that it believes holds a patent on split-circuit evaporators. As such, DOE has tentatively determined that each manufacturer’s design is unique and would not infringe on active patents and notes that even if there is an intellectual property claim on a specific split-circuit design, manufacturers could use a multiple circuit design with multiple evaporators without necessarily using split-circuit evaporators.

f. Fan Motors

Zero Zone commented that it already uses electronically commutated motors (“ECM”) fan motors to meet the current energy standard and stated that it believes most of industry is also using this style of motor. (Zero Zone, No. 44 at p. 5) Zero Zone requested that DOE include the ECM motor in the base model. (*Id.*) Zero Zone stated that the opening height for this type of product has a disproportional impact on energy consumption because larger opening heights disproportionately increase energy use. (*Id.*) Zero Zone commented that DOE’s models account for this characteristic. (*Id.*)

DOE has maintained fan motor improvements as a technology option in this NOPR. As indicated by Zero Zone, DOE has observed that ECM fan motors are incorporated to a large extent in CRE. While DOE has observed ECMs incorporated in baseline equipment for multiple analyzed equipment classes, DOE has tentatively determined that certain baseline equipment still incorporates other less-efficient motor types. For these classes, DOE has maintained a transition to ECMs as a design option change. DOE has also

updated its motor costs relative to the June 2022 Preliminary Analysis in this analysis to reflect current pricing. See chapter 3 and 5 of the NOPR TSD for additional details.

Zero Zone commented that DOE suggested using permanent magnet synchronous motors for CRE. (Zero Zone, No. 44 at p. 6) Zero Zone noted that the study DOE references was completed in 2019, and the motors have not permeated the market since that time. (*Id.*) Zero Zone stated that the motors of such fans operate at 1800 RPM, creating unacceptable fan noise, and although its fan suppliers are aware of this technology, they do not recommend this style of motor for use in CRE. (*Id.*) Zero Zone recommended screening permanent magnet synchronous motors from use in CRE. (*Id.*)

In response to Zero Zone, DOE has observed that permanent magnet synchronous motors are available on the market for CRE. However, DOE has not identified specific commercialized designs of permanent magnet synchronous motors with the appropriate size and rated airflow for the equipment analyzed in this NOPR. Based on these observations along with further discussions with manufacturers, DOE has not considered permanent magnet synchronous motors as a design option in this NOPR, as discussed further in section IV.C.1 of this document and chapter 5 of the NOPR TSD.

g. Defrost

Continental commented that, to its knowledge, variable defrost controls have not proven to reduce energy consumption in CRE. (Continental, No. 38 at p. 2)

Zero Zone commented that variable defrost is an unreliable option that results in lost food product and therefore a monetary impact when it does not operate as intended. (Zero Zone, No. 44 at p. 4) Zero Zone commented that the potential energy savings of variable defrost are outweighed by the potential loss of product. (*Id.*)

While DOE considered variable defrost as a design option in the preliminary analysis, DOE has tentatively determined to not consider this design option in the NOPR. For further discussion, see section IV.C.1.b of this document and chapter 5 of the NOPR TSD.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further

consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.*

Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(See 10 CFR 431.4; sections 6(b)(3) and 7(b) of the Process Rule).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE’s evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (“screened out”) based on the screening criteria.

DOE received the following comments in response to the June 2022 Preliminary Analysis regarding the screening analysis.

ITW listed six design options that ITW stated sounded good but proved problematic: variable-speed

³⁹ See <https://patents.google.com/patent/US3537274>; <https://patents.google.com/patent/US3866439A/en>; <https://patents.google.com/patent/US20120137724A1/en>.

compressors that force other components to run; synchronous-reluctance fan motors with performance that does not match CRE applications; enhanced-UA condenser or evaporator coils that increase energy consumption; microchannel condenser coils that cannot be cleaned; additional one-half-inch insulation that adds cost but not value; and vacuum-insulated panels that prove too fragile for CRE. (ITW, No. 41 at pp. 34–35)

AHRI provided feedback on Table 4.3.1 “Retained Design Options,” stating that improved transparent doors; higher efficiency lighting; ECM motors; evaporator and condenser fans, motors, blades and controls (closed self-contained cases); compressors; and variable-speed compressor horizontal closed transparent self-contained ice cream freezer (“HCT.SCI”) (specific to some specific smaller self-contained equipment) were already in use to meet the current standard. (AHRI, No. 46 at p. 15) AHRI stated vacuum-insulated glass (“VIG”) was not economically viable. (*Id.*) AHRI stated thicker insulation, synchronous-speed motors, and larger evaporators (due to space constraints) had reduced utility. (*Id.*) AHRI stated vacuum-insulated panels (prone to puncture, cannot be repaired), microchannel condensers (leak and plug during operation), evaporator and condenser fans, motors, blades, and controls (open cases), high-tech defrost fans (do not necessarily save energy and are unreliable), variable-defrost systems (do not reduce energy consumption), expansion valves, and larger evaporators (limitations due to flammable refrigerants) are not technically viable. (*Id.*) AHRI noted that in previous comments to DOE these options were considered to be max-tech, but, after further consultation with members, AHRI found them to be not technically viable design options. (*Id.*) AHRI stated that antisweat controls and night curtains, and occupancy sensors had a limited market. (*Id.*) And AHRI concluded that variable speed compressors (specific to some smaller, self-contained equipment—already used in some equipment) were a viable design option. (*Id.*)

Zero Zone commented that vacuum-insulated glass is not a viable design option. (Zero Zone, No. 44 at p. 6) Zero Zone stated that its door supplier reported that the one vacuum-insulated glass supplier in the United States no longer offers the product because its high cost prevented customers from using it. (*Id.*)

NAMA commented that several of the design options shown in the June 2022 Preliminary TSD could reduce the

overall machine capacity, such as larger condensers or evaporators, more insulation, and changes to the type of glass that require new structural components. (NAMA, No. 37 at p. 15) NAMA commented that the external dimensions of a CRE appliance are limited by the height of breakrooms and built-in areas, and the width and length are limited by the machine’s integration with other machines with which CRE are paired. (*Id.*) NAMA commented that the June 2022 Preliminary TSD did not address the resultant change in utility or performance caused by a reduction in overall capacity. (*Id.*) NAMA stated that smaller capacity resulted in customers opening the door for longer periods of time and necessitated more frequent restocking, making the appliance more difficult for business owners to operate. (*Id.*)

NAMA also commented that several of the design options suggested by DOE (e.g., lower-wattage refrigeration systems, vacuum-panel insulation, different evaporators or condensers, and lower-wattage fan motors) could affect the overall performance of the machine. (*Id.*) NAMA stated that overall performance of CRE is critical and can be significantly affected by a difference of 1 degree Celsius. (*Id.*) NAMA requested that DOE review the design options for energy efficiency and also their ability to maintain critical design features and performance. (*Id.*)

Based on these comments, DOE has tentatively determined to screen out two technology options mentioned by commenters, increased insulation thickness and vacuum-insulated panels, which are discussed in more detail in section IV.B.1 of this document.

However, DOE disagrees with commenters that permanent magnet synchronous motors meet the criteria of “impacts on product utility” because, although the permanent magnet synchronous motors currently available on the market are not optimized for size and rated airflow of CRE,⁴⁰ there is not a significant adverse impact on the utility of the product. DOE also disagrees with commenters that increased evaporator or condenser surface areas meet the criteria of “impacts on product utility” because there is not a significant adverse impact on the utility of the product unless the increased evaporator or condenser requires a reduction in the overall CRE capacity. DOE notes that it did not consider any technology options that reduce the overall CRE capacity,

consistent with the criteria “impacts on product utility.”

DOE also disagrees with commenters that microchannel condensers, evaporator fan controls, variable defrost systems, expansion valve improvements, and increased evaporator surface area meet the criteria of “technological feasibility.” Microchannel heat exchangers are often used in the automobile industry, and the stationary air conditioning and refrigeration markets have seen recent increases in implementation of microchannel heat exchangers. As noted by commenters and based on feedback during manufacturer interviews, DOE only considered evaporator fan controls as a design option on closed self-contained CRE equipment classes. DOE notes that the amount of energy saved for each design option is not a criterion for the screening analysis and is discussed in the engineering analysis. For increased evaporator surface area, DOE considered the limitations due to flammable refrigerants (e.g., R–290) consistent with industry safety standards as discussed in section IV.C.1.a of this document.

Additionally, DOE disagrees with commenters that vacuum-insulated glass is not a viable design option. DOE is aware of vacuum-insulated glass door suppliers outside of the United States and notes that that “not economically viable” is not one of the screening criteria specified in the Process Rule. DOE considered the cost of each design option in the engineering analysis.

Finally, in response to commenters, DOE notes that “high-tech defrost fans,” “lower-wattage refrigeration systems,” and “lower-wattage fan motors” are not technology options DOE has analyzed in the preliminary or NOPR analysis.

DOE discusses the screened-out technologies in section IV.B.1 of this document, lists the remaining technology options in section IV.B.2 of this document, and discusses the design options in section IV.C of this document and chapter 5 of the NOPR TSD.

1. Screened-Out Technologies

For CRE, the screening criteria were applied to the technology options to either retain or eliminate technology for consideration in the engineering analysis. The screened-out technology options and the rationale for screening out each technology option considered in this analysis is detailed below.

a. Increased Insulation Thickness

In response to the June 2022 Preliminary Analysis, Continental commented that increasing insulation thickness, even by half an inch as

⁴⁰ See www.qmpower.com/wp-content/uploads/2022/06/Product_Info-QSync_12W_60Hz-6.2.22-WEB.pdf.

proposed by DOE, would expand equipment sizes and/or reduce internal capacity, both of which would have significant negative impact on utility for the end user. (Continental, No. 38 at p. 2)

Zero Zone commented that DOE's expectation that manufacturers will increase the thickness of insulation does not take into account the importance of physical dimensions in CRE equipment. (Zero Zone, No. 44 at p. 4) Zero Zone added that customers need replacement equipment that will fit in the existing available space and fit through 80-inch doorways. (*Id.*) Zero Zone stated that increasing the thickness of the internal insulation reduces the refrigerated volume, and equipment classes that use refrigerated volume in their allowable energy calculation would therefore see a "double hit." (*Id.*) Zero Zone asserted that the resources in engineering design hours and retooling costs for the sheet metal necessary to accommodate such adjustments to insulation would be overly burdensome to manufacturers. (*Id.* at pp. 4–5) Zero Zone stated that increasing the thickness of internal insulation would result in stranded inventory for manufacturers and would affect end users' ability to replace their aging equipment due to size limitations. (*Id.* at p. 5)

As discussed in chapter 3 of the NOPR TSD, increasing insulation thickness increases the thermal resistivity of the exterior of the unit, which in turn reduces the heat load that must be removed by the CRE's refrigeration system. However, to increase insulation thickness, either an increase to the size of the unit or a decrease to the refrigerated volume of the unit must occur. Because CRE is typically required to meet standard dimensions to fit into a fixed amount of space, the refrigerated volume of the unit may need to be decreased to accommodate increased insulation thickness, thus limiting the capacity of the unit. As a result, DOE has tentatively determined that increased insulation thickness meets the screening criterion of "impacts on product utility." In this NOPR, DOE has screened out increased insulation thickness as a design option for improving the energy efficiency of CRE.

b. Vacuum-Insulated Panels

In response to the June 2022 Preliminary Analysis, Continental commented that vacuum-insulated panels are relatively expensive, introduce significant complexity to manufacturing, reduce equipment structural stability, are subject to damage, and are not easily replaceable,

requiring replacement of the entire unit. (Continental, No. 38 at p. 2)

AHRI commented that cost estimates in the June 2022 Preliminary TSD were significantly underestimated related to pandemic-related scarcity pricing. (AHRI, No. 46 at pp. 14–15) AHRI stated it planned to complete a survey to clarify the cost of vacuum panels (estimated by DOE to be considerably less expensive than is accurate) among other components, but could not do so within the 30-day deadline, especially given that the comment period for the test procedure and the walk-in cooler and walk-in freezer Preliminary TSD overlapped. (*Id.* at p. 15) AHRI stated that components are difficult to obtain because of longer shipping times and this impacts research and development and testing timelines and time for listing through nationally recognized testing laboratories. (*Id.*) AHRI commented that these factors should be considered in future timing and rulemaking processes. (*Id.*)

Zero Zone commented that vacuum-insulation panels are insufficiently robust and can lose their vacuum through bending or flexing. (Zero Zone, No 44 at p. 6) Zero Zone commented also that it can be difficult to determine the vacuum has been lost until the final product operation reveals condensation. (*Id.*) Zero Zone stated that large commercial refrigerators flex during shipping and customers fasten items to commercial refrigerators with screws, which can increase the risk of failure when using vacuum panels. (*Id.*) Zero Zone noted that a vacuum panel failure in a continuous line-up of remote commercial refrigerators results in the entire line up being moved to access the panel, which can result in replacement of the refrigerator. (*Id.*) Zero Zone recommended that DOE should not include vacuum-insulated panels as a design option. (*Id.*)

As discussed in chapter 3 of the NOPR TSD, VIPs allow reduction in insulation thickness while maintaining or increasing thermal resistivity, due to the reduced conductivity that occurs in a low vacuum. Because VIPs consist of an outer airtight membrane surrounding a core material to form a cavity, any puncture to a panel renders the VIP ineffective. This may prevent customers from being able to install any screws or fasteners into the panel. VIPs cannot be repaired once a leak is detected in the field and would require replacement upon puncture or failure. In the June 2022 Preliminary Analysis TSD, DOE stated that it had not observed VIPs incorporated in CRE but had observed VIPs used in other refrigeration products (*e.g.*, consumer refrigerators)

(see section 2.5.1.6 of the June 2022 Preliminary TSD).

Based on comments received and feedback during manufacturer interviews, DOE has tentatively determined that because of the significant difference in shelf loads between commercial and consumer refrigeration units, CRE may require brackets or other supporting structures to accommodate the heavier shelf loads, installed with screws or fasteners that could puncture the VIP. As a result, DOE has tentatively determined that vacuum-insulated panels meet the screening criterion of "impacts on product utility." In this NOPR, DOE has screened out vacuum-insulated panels as a design option for improving the energy efficiency of CRE.

c. Linear compressors

As discussed in chapter 3 of the June 2022 Preliminary TSD and chapter 3 of the NOPR TSD, linear compressors use a linear rather than rotary motion to reduce the need for a crankshaft and linkage, resulting in reduced friction and side forces. Most linear compressors use a free-piston arrangement and can be controlled for a range of capacities. Compressor manufacturers had begun development on linear compressors for residential refrigerators. However, a lack of availability on the market of linear compressors with a large enough cooling capacity for commercial refrigeration sizes has prevented further development of this technology for commercial refrigeration applications and, therefore, DOE has tentatively determined that linear compressors meet the screening criterion of "practicability to manufacture, install, and service." DOE did not receive any comments on its tentative determination to screen out linear compressors in response to the June 2022 Preliminary Analysis, and, in this NOPR, DOE has screened out linear compressors as a design option for improving the energy efficiency of CRE.

d. Air curtain design

As discussed in chapter 3 of the June 2022 Preliminary TSD and chapter 3 of the NOPR TSD, an air curtain is a fan-powered device that creates a moving wall (curtain) of air, which separates two spaces of different temperatures. Air curtains are used in CRE to minimize the infiltration of warmer external air into the refrigerated space. DOE's research had presented the possibility of advanced air-curtain designs with levels of performance beyond the traditional air curtains generally employed in open display cases being used in the CRE industry.

However, DOE has tentatively determined that advanced air-curtain designs are currently only in the research stage and, therefore, DOE has initially determined that advanced air-curtain designs meet the screening criterion of “practicability to manufacture, install, and service.” DOE did not receive any comments on its

tentative determination to screen out air curtains in response to the June 2022 Preliminary Analysis, and, in this NOPR, DOE has screened out improved air curtains as a design option for improving the energy efficiency of CRE.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the

other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE’s NOPR analysis. In summary, DOE did not screen out the following technology options presented in table IV.4.

TABLE IV.4—REMAINING TECHNOLOGY OPTIONS FOR CRE

Insulation	Evaporator
Improved resistivity of insulation (insulation type)	Increased surface area
Lighting	Improved evaporator coil design
Higher-efficiency lighting	Low-pressure differential evaporator
Occupancy Sensors	Condenser**
Improved transparent doors*	Increased surface area**
Low-emissivity coatings*	Tube-and-fin enhancements**
Inert gas fill*	Microchannel heat exchanger**
Vacuum-insulated glass*	Compressor**
Additional panes*	Improved compressor efficiency**
Anti-sweat heater controls*	Alternative refrigerants**
Anti-fog films*	Variable-speed compressors**
Frame design*	Other technologies
Fans and fan motors	Defrost systems
Evaporator fan motors	Expansion valve improvements
Evaporator fan blades	Night curtains***
Evaporator fan controls	Liquid suction heat exchanger**
Condenser fan motors**	
Condenser fan blades**	
Condenser fan controls**	

* Only applies to equipment classes with doors.

** Only applies to self-contained equipment classes.

*** Only applies to equipment classes without doors (open equipment classes).

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available equipment 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, unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

DOE requests comment on the decision to screen out increased insulation thickness, vacuum-insulated panels, linear compressors, and air curtain design as design options for improving the energy efficiency of CRE.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of CRE. 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 equipment cost at each efficiency level (*i.e.*, the “cost analysis”). In determining the

performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the baseline cost, as well as the incremental cost for the 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 equipment (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 equipment 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 relies on a design-option approach, supported with the testing and reverse engineering of directly analyzed CRE. The design options were incrementally added to the baseline configuration and continued through the “max-tech” configuration (*i.e.*, implementing the “best available” combination of available design options).

Consistent with the March 2014 Final Rule analysis (see chapter 5 of the

March 2014 Final Rule TSD⁴¹), DOE estimated the performance of design option combinations using an engineering analysis spreadsheet model. This model estimates the daily energy consumption of CRE in kWh/day at various performance levels using a design-option approach. DOE generally relied on test data, CCD information, feedback from manufacturer interviews, publicly available component information, and reverse engineering to support and calibrate the engineering analysis spreadsheet model. The model calculates energy consumption at each performance level separately for each analysis configuration.

In the March 2014 Final Rule analysis, DOE selected 25 high shipment volume equipment classes, referred to as “primary” classes, to analyze directly in the engineering analysis (see chapter 5 of the March 2014 Final Rule TSD⁴²). In this NOPR, DOE has followed a similar approach of directly analyzing 28 primary equipment classes. DOE directly analyzed the same primary equipment classes as the March 2014 Final Rule, except that the PD.SC.M equipment class was not included, and DOE directly analyzed four new equipment classes: VCT.SC.H, VCS.SC.H, chef base self-contained medium temperature (“CB.SC.M”), chef base self-contained low temperature (“CB.SC.L”). Additional details of the engineering analysis are available in chapter 5 of the NOPR TSD.

a. Baseline Energy Use

For each equipment class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each equipment class represents the characteristics of equipment typical of that class (e.g., capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

In the June 2022 Preliminary TSD, DOE utilized the current standards for CRE for classes with current standards and the energy consumption based on the assumed baseline specifications modeled in the engineering analysis spreadsheet for classes without current standards as the baseline energy use for

each analyzed equipment class. For higher efficiency levels, DOE assessed CRE efficiencies as a percent improvement relative to the baseline model. This provided a consistent efficiency comparison across each equipment class. DOE considered the efficiency improvements associated with implementing available design options beyond the baseline to the max-tech efficiency level. See chapter 5 of the June 2022 Preliminary TSD for additional details.

In response to the June 2022 Preliminary Analysis, Zero Zone commented that, while it believes DOE is developing models and setting energy levels based on average energy values, no data were provided to confirm or deny that suspicion. (Zero Zone, No. 44 at p. 2) Zero Zone stated that setting energy values at an average expected level and requiring manufacturers to have all products meet the average energy level is incorrect, and such approach necessitates that manufacturers develop equipment with low enough average energy levels that the worst measured performance of any product is less than DOE’s average value. (*Id.*) Zero Zone provided figures illustrating that if DOE’s regulated average energy requirement is 30 kWh/day, then industry must shift to a new average that is less than the uncertainty level in order to be sure that products do not exceed the energy level requirement. (*Id.*) Zero Zone requested that DOE account for this lower energy level penalty and provide which options are included in each energy level so that Zero Zone can fully evaluate the proposals. (*Id.* at p. 3)

Zero Zone additionally commented that DOE’s proposed CRE test procedure requires manufacturers to calculate the uncertainty level and apply it to their rating, but DOE does not appear to apply the test requirements for uncertainty to its own work. (*Id.* at p. 2) Zero Zone stated that DOE proposed a 5-percent tolerance on total display area, but that one variation caused a 4.62-percent variation in allowable energy swinging on Zero Zone’s five-door case. (*Id.*) Zero Zone requested that DOE take into account all uncertainty when estimating energy consumption of CRE. (*Id.*)

In response to the comment from Zero Zone, DOE notes that the engineering spreadsheet model that is used to develop the baseline and efficiency levels is calibrated using publicly available CCD data, which are subject to the requirements of the determination of represented value at 10 CFR 429.42(a), as well as ENERGY STAR data and manufacturer-submitted data. The DOE

requirements specify that manufacturers must determine the represented value, which includes the certified rating, for each basic model of commercial refrigerator, freezer, or refrigerator-freezer either by testing, in conjunction with the applicable sampling provisions, or by applying an alternative efficiency determination method (“AEDM”). In the case where the reported value is derived from testing, at least two or more units should be tested pursuant to 10 CFR 429.42 and the appropriate sampling statistics must be applied in order to develop the represented value. 79 FR 22277, 22296. Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of: (1) the mean of the sample or, (2) the upper 95 percent confidence limit (UCL) of the true mean divided by 1.10. 10 CFR 429.42(a)(1)(ii)(A). These requirements provide a statistical assessment of test results used to determine the represented value for a basic model which indicates a high level of confidence that the model population average energy use is less than or equal to the standard. DOE did not consider additional uncertainty in the proposed maximum daily energy consumption standard equation in this NOPR analysis.

DOE expects that Zero Zone is referring to section J., Enforcement Provisions, of the June 2022 Test Procedure NOPR and the respective proposed regulatory text at 10 CFR 429.134. As stated in the June 2022 Test Procedure NOPR, product-specific enforcement provisions specify which ratings or measurements DOE will use to determine compliance with applicable energy or water conservation standards. 87 FR 39164, 39211. Generally, DOE provides that the certified metric is used for enforcement purposes (e.g., calculation of the applicable energy conservation standard) if the average value measured during assessment and enforcement testing is within a specified percent of the rated value. *Id.* Otherwise, the average measured value would be used. *Id.* DOE proposed to add a new product-specific enforcement provision section stating that the certified volume for CRE will be considered valid only if the measurement(s) (either the measured volume for a single unit sample or the average of the measured volumes for a multiple unit sample) is within five percent of the certified volume; otherwise, the measured volume would be used as the basis for determining the

⁴¹ See www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.

⁴² See www.regulations.gov/document/EERE-2010-BT-STD-0003-0102.

applicable energy conservation standard. *Id.* at 87 FR 39212. Similarly, DOE proposed that the certified TDA for CRE will be considered valid only if the measurement(s) (either the measured TDA for a single unit sample or the average of the measured TDAs for a multiple unit sample) is within five percent of the certified TDA. *Id.* If the certified TDA is found to not be valid, the measured TDA would be used to determine the applicable energy conservation standard. *Id.* These proposals in the June 2022 Test Procedure NOPR are specific to how DOE conducts enforcement testing and a tolerance on the certified volume or TDA of a given CRE model is used to decide whether the certified volume or TDA will be used to determine compliance with the applicable standard, or, if the average measured volume or TDA is outside of the tolerance, the average measured volume or TDA of the assessment and enforcement units will be used to determine compliance with the applicable standard.

Refrigerants. In response to the June 2022 Preliminary Analysis, DOE received several comments from stakeholders regarding how refrigerants were considered in the preliminary engineering analysis.

AHRI commented that many states that adopted the SNAP Rules do not allow the use of the refrigerant R404A. (AHRI, No. 46 at p. 3) AHRI requested clarification regarding whether this addresses self-contained cases. (*Id.*)

NAFEM expressed concern about DOE's position not to account for future refrigerant regulatory changes by the EPA. (NAFEM, No. 40 at p. 3). NAFEM stated its concern that DOE had not analyzed refrigerant transitions of remote condensing systems in the June 2022 Preliminary TSD and had declined to evaluate alternative refrigerants as a design option for remote CRE due to the lack of a test procedure. (*Id.*) NAFEM recommended that DOE and EPA better coordinate their actions to achieve their mutual goals, and NAFEM volunteered to educate DOE technical staff so that any proposed rule accurately reflects industry knowledge. (*Id.*)

The Joint Commenters requested that DOE analyze propane refrigerant for additional equipment classes. (Joint Commenters, No. 39 at p. 1)

AHRI commented that a preliminary transition was in process from R-404A to refrigerants with a global warming potential of approximately 1500 and refrigerants used in colder temperature applications have a GWP of 2200. (AHRI, No. 46 at p. 12) AHRI noted that most lower-GWP refrigerants were

limited by building codes because the necessary standard, UL 60335–2–89, was just published recently in October 2021. (*Id.*) AHRI commented that the second, more complex and costly refrigerant transition in January 2026 was unaccounted for in the June 2022 Preliminary TSD, and that the two transitions will have a significant reduction in radiative-forcing, short-lived climate-polluting HFCs and should be taken into consideration in the social cost of carbon and environmental impact assessments. (*Id.*)

AHRI commented that EPA does not yet allow for R-290 or an ASHRAE Class A3 refrigerant to be used and few of the thousands of State and local building codes have been updated to charge refrigeration equipment and store necessary quantities to supply end-user needs. (*Id.* at p. 13) AHRI stated that significant work must be done to finalize codes prior to the anticipated 2026 transition and AHRI noted that AZ, CO, IN, ME, MO, NY, TN, TX, VT, WA, and WV would allow for the use these new refrigerants once the EPA listed them. (*Id.* at pp. 13–14)

AHRI pointed out that manufacturers are still testing refrigerants for the 2026 transition, and that because refrigerant and component manufacturers have largely been focused on larger markets than many of the equipment types sold in the CRE space, not all of the details are known about the impact of specific refrigerants to energy efficiency. (*Id.* at p. 13) AHRI stated, however, that some proposed blends are known to have higher glide and lower efficiencies (some significantly lower) than those in use, especially for colder-temperature applications. (*Id.*) AHRI commented that, in addition, the energy efficiency impact of an important mitigation strategy related to refrigerants has not been addressed—the need to continuously operate fans to reduce the risk of reaching a flammable concentration. (*Id.*) AHRI noted that, in some cases, glide is high enough that evaporator re-design is needed, making costs even higher to conform with energy conservation standards. (*Id.*)

AHRI commented that most lower-GWP refrigerants have a different flammability classification than those currently used today and cost estimates must also include new electrical components required to be “spark-proof” to eliminate the risk of ignition in case of a leak. (*Id.* at p. 12) AHRI noted that motors, wiring, compressors, and other components must all comply with this flammability classification, making them more costly than estimated in the June 2022 Preliminary TSD. (*Id.*)

NAMA stated that several of the design options mentioned in the June 2022 Preliminary TSD are either not available or not realistic in NAMA equipment, such as the change to an A–3 refrigerant that would require nearly a dozen other components to also be changed. (NAMA, No. 37 at p. 7).

NAMA commented that DOE failed to mention the CRADA between the NAMA Foundation, DOE, and Oak Ridge National Laboratory (“ORNL”) in the June 2022 Preliminary TSD. (*Id.* at p. 12) NAMA stated that most of the activities during the 2019–2021 CRADA were focused on reducing the risk during a potential leak situation. (*Id.*) NAMA stated that in nearly all scenarios tested by ORNL, additional fans were necessary to reduce the mixture of air and refrigerant below the lower flammability limit (“LFL”), but the energy used by these fans was not accounted for in the June 2022 Preliminary TSD. (*Id.*) NAMA commented that the proposed DOE test procedure would actually penalize self-contained bottle cooler manufacturers for using additional ventilation. (*Id.*) NAMA further stated that the COVID–19 pandemic had delayed progress in the CRADA and that NAMA had requested an extension so that the remaining items (over half) could be studied. (*Id.*) NAMA commented that these remaining items look at possible energy efficiency gains, and the lack of results had put its industry behind schedule to meet any new energy efficiency requirements from DOE. (*Id.*) NAMA requested that DOE delay new minimum energy efficiency standards until manufacturers have the research from ORNL to pursue the research and development of new technologies. (*Id.*)

Zero Zone commented that DOE asserted multi-circuit evaporators are a design option that would allow larger pieces of equipment to use propane in multiple small systems. (Zero Zone, No. 44 at p. 5) Zero Zone commented that using propane in systems over 150 grams requires additional leak-mitigation equipment. (*Id.*) Zero Zone stated that until the release of UL 60335–2–89, CRE could only use 150-gram charges of propane and were not required to have mitigation strategies, which explains why DOE has not observed mitigation on CRE on the market. (*Id.*) Zero Zone requested that DOE include the mitigation cost in its evaluation. (*Id.*)

As recommended by stakeholders, DOE is considering the impact of the December 2022 EPA NOPR on CRE in this NOPR. As described in section I of this document, DOE understands that it would be beneficial to CRE equipment

manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR.

Therefore, DOE is proposing that the proposed standards, if adopted, would apply to all CRE listed in table I.1 manufactured in, or imported into, the United States on or after the date that is

3 years after the date on which the final established and amended standards are published. The December 2022 EPA NOPR proposed to prohibit manufacture or import of such CRE starting January 1, 2025, which is at least 3 years earlier than the expected compliance date for any amended CRE standards associated with the proposals in this document.

Hence, the proposed refrigerant

prohibitions listed in the December 2022 EPA NOPR are assumed to be enacted for the purpose of DOE's analysis in support of this NOPR.

Refrigerants not prohibited from use in CRE in the December 2022 EPA NOPR are presumed to be permitted for use in CRE. Table IV.5 summarizes the relevant provisions from the December 2022 EPA NOPR.

TABLE IV.5—DECEMBER 2022 EPA NOPR SUMMARY FOR CRE

Sectors and subsectors	Proposed GWP limit	Compliance date
Retail food refrigeration—stand-alone units	150	January 1, 2025.
Retail food refrigeration—refrigerated food processing and dispensing equipment	150	January 1, 2025.
Retail food refrigeration—supermarket systems with refrigerant charge capacities of 200 pounds or greater	150	January 1, 2025.
Retail food refrigeration—supermarket systems with refrigeration charge capacities less than 200 pounds charge.	300	January 1, 2025.
Retail food refrigeration—supermarket systems, high temperature side of cascade system	300	January 1, 2025.
Retail food refrigeration—remote condensing units with refrigerant charge capacities of 200 pounds or greater	150	January 1, 2025.
Retail food refrigeration—remote condensing units with refrigerant charge capacities less than 200 pounds	300	January 1, 2025.
Retail food refrigeration—remote condensing units, high temperature side of cascade systems	300	January 1, 2025.

In the December 2022 EPA NOPR, self-contained CRE (EPA refers to self-contained CRE as “stand-alone equipment”) are limited to a GWP of 150 for all DOE self-contained equipment classes. Commercial refrigeration equipment has typically used R-404A or R-134a refrigerant, which have a GWP above 150. Because of the high GWP of R-404A and R-134a, significant research has been conducted to find alternative refrigerants with less or no GWP. Naturally occurring substances such as carbon dioxide, ammonia, and hydrocarbons (specifically propane (*i.e.*, R-290) for commercial refrigeration equipment) all have very low GWP. DOE notes that several manufacturers currently rate CRE models to both ENERGY STAR⁴³ and DOE⁴⁴ with CRE equipment using R-290 (GWP of 3) and manufacturers indicated in manufacturer interviews that the industry is planning to transition to R-290 for self-contained CRE. EPA currently lists R-290 as acceptable with use conditions for self-contained CRE,⁴⁵ however, EPA has not yet updated the use conditions for R-

290 consistent with the latest industry safety standards for CRE. EPA currently lists R-290 as acceptable with use conditions for a refrigerant charge of up to 150 grams in self-contained CRE, but in a recent proposed rule, EPA proposed to increase the allowable charge to 304 grams for closed equipment and 494 grams for open equipment to harmonize with the maximum charge quantity allowed by industry safety standards⁴⁶ and to be consistent with the December 2022 EPA NOPR (*i.e.*, prohibitions for retail food refrigeration—standalone units, when using or intended to use a regulated substance, or a blend containing a regulated substance with a global warming potential of 150 or greater). Therefore, DOE has tentatively determined that once EPA finalizes the proposed increases to the allowable charge limits, all self-contained CRE equipment can use R-290.

DOE expects that the use of R-290 generally will improve efficiency as compared with the refrigerants currently in use (*e.g.*, R-404A), which are proposed to be prohibited by the December 2022 EPA NOPR, because R-290 has higher refrigeration-cycle efficiency than the current refrigerants. Thus, DOE expects the December 2022 EPA NOPR to require redesign that will

improve the efficiency of self-contained CRE equipment. Hence, the baseline levels for self-contained CRE in this NOPR reflect the design changes made by manufacturers in response to the December 2022 EPA NOPR, which incorporates refrigerant conversion to R-290. The expected efficiency improvement associated with this refrigerant change varies by class and is presented in table IV.6.

DOE considered the requirement for components to be “spark-proof” for use with the R-290 refrigerant (*i.e.*, propane) and the associated costs were included in the cost of baseline models.

In chapter 2 of the June 2022 Preliminary TSD, DOE stated that DOE has not observed any additional leak monitoring or ventilation components for leak mitigation in any analyzed self-contained equipment that currently incorporates R-290 refrigerant.⁴⁷ (See June 2022 Preliminary TSD, Chapter 2). As a result, for the representative equipment sizes considered in the preliminary engineering analysis, DOE initially determined that leak mitigation controls are not needed and therefore did not account for any additional energy consuming components with the transition to R-290 refrigerant. (*Id.*) Based on the CRE that DOE tested and tore down in support of this NOPR, DOE

⁴³ See www.energystar.gov/productfinder/product/certified-commercial-refrigerators-and-freezers/results.

⁴⁴ See www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*.

⁴⁵ See www.epa.gov/snap/substitutes-stand-alone-equipment.

⁴⁶ SNAP Proposed Rule 26 (88 FR 33722) harmonizes with UL Standard 60335-2-89, Edition 2, published on October 27, 2021.

⁴⁷ See www.regulations.gov/document/EERE-2017-BT-STD-0007-0013.

has not observed any refrigerant leak mitigation controls that consume additional energy use for self-contained CRE that use 150 grams of R-290 or less. DOE expects that any refrigerant leak mitigation controls that manufacturers implement on self-contained CRE would not use any additional energy use as measured according to the DOE test procedure (e.g., any ventilation fans used to disperse refrigerant in the event of a refrigerant leak would not be on and using energy unless a refrigerant leak was detected).

In response to the comment from NAMA, DOE acknowledges the ongoing research at ORNL under the CRADA. DOE recognizes that leak mitigation technologies are still under development and requests comment and data on the use of such technologies, how they may impact CRE energy use as measured according to the DOE test procedure, and the associated cost of such technologies. DOE welcomes any additional comments and supporting data, including any additional results of the CRADA, in response to this NOPR.

DOE is also aware of small CRE equipment using R-600a, which is a similar refrigerant to R-290. DOE has tentatively determined that R-600a has similar refrigeration-cycle efficiency as R-290 and that the performance of CRE using R-290 is representative of CRE using R-600a.

As discussed in section IV.C.1.a, remote condensing CRE have proposed GWP limits of either 150 or 300, depending on the refrigerant system charge size or refrigerant system type. In chapter 2 of the June 2022 Preliminary TSD, DOE noted that the current and proposed DOE test procedures account for the refrigeration load of remote cases plus any energy consumed by components within the equipment.⁴⁸ (See June 2022 TSD, Chapter 2) By reference to table 1 in AHRI 1200, the test procedure calculates an expected compressor energy consumption associated with the case refrigeration load, independent of compressor details including refrigerant type. (*Id.*) Hence, DOE initially determined that alternative refrigerants in remote CRE cases do not result in changes in measured energy consumption. (*Id.*) Therefore, DOE did not consider alternative refrigerants in remote CRE cases in the preliminary engineering analysis. (*Id.*) In this NOPR, DOE has tentatively determined that the current standard is representative of the baseline energy use for remote-condensing CRE using refrigerants that

comply with the December 2022 EPA NOPR when tested according to the DOE test procedure.

DOE's analysis considers that these efficiency improvements, equipment costs, and manufacturer investments required to comply with the December 2022 EPA NOPR will be in effect prior to the time of compliance for the proposed amended DOE CRE standards for all CRE equipment classes and sizes. DOE has updated its baseline equipment costs to reflect current costs based on feedback received during manufacturer interviews, information collected during CRE teardowns, and market research.

TABLE IV.6—EFFECT OF USE OF R-290 ON ENERGY USE IN BASELINE MODELS

Equipment class	Energy use reduction below DOE standard (%)
VOP.SC.M	4.4
SVO.SC.M	9.2
HZO.SC.M	19.5
HZO.SC.L	4.8
VCT.SC.M	18.8
VCT.SC.L	2.8
VCS.SC.M	20.5
VCS.SC.L	8.5
HCT.SC.M	0.0
HCT.SC.L	0.0
HCS.SC.M	20.1
HCS.SC.L	22.1
SOC.SC.M	2.7
VCT.SC.I	0.0
HCT.SC.I	0.0
VCS.SC.I	3.3

The expected energy efficiency improvement associated with the change to R-290 is based on R-290 single-speed compressors currently available on the market suitable for CRE equipment. In this NOPR, DOE did not consider additional single-speed compressor efficiency improvements beyond the baseline because DOE expects that the single-speed compressors currently available on the market for refrigerants that comply with the December 2022 EPA NOPR represent the maximum single-speed compressor efficiency achievable for each respective equipment class.

DOE requests comment on its proposal to use baseline levels for CRE equipment based upon the anticipated design changes that will be made by manufacturers in response to the December 2022 EPA NOPR.

DOE further requests comment on its estimates of energy-use reduction associated with the design changes made by manufacturers in response to the December 2022 EPA NOPR.

Baseline Components. NAMA commented that the June 2022 Preliminary TSD contained errors and appeared to have been prepared prior to significant changes that occurred from 2019–2022. (NAMA, No. 37, p. 4–5) NAMA commented also that features DOE seemed to believe represented future improvements to design had already been implemented, leading to inaccurate baseline model assumptions by DOE about energy efficiency levels and incremental costs. (*Id.* at p. 5)

NAMA stated that DOE's design changes, project energy efficiency improvements, and cost data on the 12 design options under consideration appeared outdated by 10 years and applicable only to very large machines greater than 50 cubic feet in volume. (*Id.* at p. 7) NAMA further commented that the design options were not representative of the possible changes, availability, and costs associated with refrigerated bottle coolers and small self-contained display cabinets. (*Id.*) NAMA recommended that DOE change its categories and make allowances for the differences in energy efficiency between small and large equipment, as well as differences in cost and cost-benefit analysis. (*Id.* at p. 9) NAMA commented that DOE could use data on shipments to modify DOE percentages according to sales-weighted numbers. (*Id.*) NAMA proposed that DOE restructure its categories in the June 2022 Preliminary TSD to include two ranges: Range 1, which would be less than 30 cubic feet, and Range 2, which would be 30 cubic feet and over in volume. (*Id.*) NAMA commented that it believes using these categories would enable a more accurate assessment of the energy savings and cost burden. (*Id.*)

NAFEM and NAMA commented that the design options in the 2014 TSD were so stringent that industry had to go beyond DOE's standards and incorporate features such as LED lighting, brushless DC evaporator fan motors, high-performance doors, and brushless DC condenser fan motors. (NAFEM, No. 40 at pp. 5–6; NAMA, No. 37 at p. 5)

Zero Zone similarly stated that it disagrees with the design options that fall above the 2017 equipment class maximum daily energy consumption standard level and that LED lighting, high-efficiency fan motors (like ECM), and high-performance doors are already employed to meet current maximum energy consumption levels. (Zero Zone, No. 44 at p. 3) Zero Zone commented that this information is available on company specification sheets and that an analysis using this available information would show that the slope

⁴⁸ See www.regulations.gov/document/EERE-2017-BT-STD-0007-0013.

of the manufacturer production costs versus daily energy use in DOE's engineering spreadsheet should be re-evaluated. (*Id.*)

ITW recommended adding technologies to the baseline as they were applied by industry, citing examples including ECM fans, high-efficiency compressors, and evaporator fan controls. (ITW, No. 41 at p. 34)

NAFEM and NAMA stated that because these and other technologies were already necessary to meet the 2014 standard, DOE should not be able to claim any new energy efficiency benefits when incorporating such technologies into the June 2022 Preliminary TSD. (NAFEM, No. 40 at p. 6; NAMA, No. 37 at p. 5) Zero Zone similarly commented that DOE's graph in the June 2022 Preliminary TSD indicates that using high-performance doors would reduce the calculated daily energy use from 35.14 kWh/day to 26.60 kWh/day, but Zero Zone stated that this design option is already employed by manufacturers, and that DOE is therefore double counting the impact of high-performance doors. (Zero Zone, No. 44 at p. 3).

AHRI commented that design options included in the June 2022 Preliminary TSD—such as high efficiency doors, fans, motors, and ECM in self-contained cases—are largely already incorporated by manufacturers to meet current standards and that counting them a second time will not cause the equipment to meet the proposed energy efficiency levels. (AHRI, No. 46 at p. 3) AHRI noted that vacuum-packed doors and insulation are a few of the recommended design options that are not already in use by manufacturers. (*Id.*) AHRI commented that low-temperature vertical closed transparent (“VCT”) classes already use high-efficiency doors and that DOE's model is incorrect regarding low-temperature VCT equipment classes as DOE assumes no-sweat anti-heat. (*Id.* at p. 6) AHRI noted that DOE's baseline does not meet current energy-efficiency standards, as the current standard for VCT remote low temperature allowable is 34.46 kWh/day compared to 35.14 kWh/day in DOE's baseline design without design options. (*Id.*) AHRI noted also that there is no room for anti-sweat controls under the ASHRAE test conditions and therefore this technology is not logical. (*Id.*)

AHRI commented that many potential energy saving scenarios in the June 2022 Preliminary TSD contain elements that are already in use or are technically impractical for refrigeration equipment. (*Id.* at p. 14) AHRI stated that the tear-down analysis must have used equipment built before 2019, which

would have excluded design features needed to meet current energy conservation standards, such as efficient doors and LED lights. (*Id.*) AHRI commented that variable-speed compressors are impactful with significant changing loads, but not for most refrigeration systems. (*Id.*) AHRI also stated that the analysis failed to recognize concerns with proposed product features; for example, retailers generally do not want occupancy lighting because a light that is off indicates to consumers that equipment is not working properly and that food may be spoiled. (*Id.*) AHRI commented that energy-saving opportunities are lower after the elimination of design features that are technically infeasible, already in use, or cost prohibitive. (*Id.*) AHRI stated that design options are also limited by the equipment footprint: larger compressors or additional insulation requirements increase case sizes and reduce storage capacity, creating less utility and requiring remodeling to fit in current spaces. (*Id.*) AHRI commented that the June 2022 Preliminary TSD failed to address the impact of design options on performance or other design features, such as temperature, and offered the example of the VCT.RC.M equipment class in which some OEMs have begun incorporating high-efficiency, triple-pane doors and increased insulation. (*Id.*) AHRI stated the baseline components in the tear-down analysis included evaporator fans that are shaded pole motors and have not been used in years. (*Id.*)

Continental stated that some selections in the June 2022 Preliminary TSD technology options have not been sufficiently evaluated for their current usage, anticipated contribution to energy reduction, technological viability, cost impact, and/or bearing on the utility of the equipment. (Continental, No. 38 at p. 2) Continental noted that many manufacturers already use improved transparent doors, high-efficiency LED lighting, and high-efficiency ECM fans to meet current standards for DOE and/or ENERGY STAR. (*Id.*)

Zero Zone commented that DOE did not conduct manufacturer interviews. (Zero Zone, No. 44 at p. 5) Zero Zone stated that each of its models in the compliance database uses a unique code to identify the components provided. (*Id.*) Zero Zone questioned how DOE determined what is included in this base line. (*Id.*)

With respect to comments from NAMA, NAFEM, ITW, AHRI, Continental, and Zero Zone, DOE followed a similar approach to the

March 2014 Final Rule analysis in the June 2022 Preliminary Analysis but incorporated additional design options and updated the design option assumptions based on publicly available manufacturer specifications and preliminary test data. In support of this NOPR, manufacturer interviews were conducted and interviews yielded feedback on several aspects of the June 2022 Preliminary Analysis, including typical CRE baseline components. Further, DOE has reviewed the current CRE market, incorporated feedback from the June 2022 Preliminary Analysis, and incorporated information gathered during manufacturer interviews to update the baseline components in this NOPR to reflect current designs and ensure that design options have not already been implemented in a representative baseline CRE for each equipment class.

For the June 2022 Preliminary Analysis, DOE directly analyzed multiple equipment classes intended to represent the majority of industry shipments for CRE. Within each analyzed equipment class, DOE also selected a volume or TDA for the analysis to best represent the range of equipment available in that equipment class. For currently covered equipment classes, the representative volumes and TDAs selected were consistent with those analyzed for the March 2014 Final Rule. DOE has retained the June 2022 Preliminary Analysis approach in this NOPR. Although the NOPR analysis is conducted at one representative volume or TDA for each directly analyzed class, DOE considers the components, design options, costs, and energy use characteristics of CRE across the entire equipment class.

See chapter 5 of the NOPR TSD for additional details on the baseline components in each equipment class.

AHT commented that internal LED lighting is a common characteristic in all closed transparent equipment classes, yet in the June 2022 Preliminary Analysis, DOE does not indicate lights for the baseline design options for horizontal closed transparent self-contained equipment classes (HCT.SC.M, HCT.SC.L, HCT.SC.I). (AHT, No. 48 at p. 1) AHT stated that good internal illumination is of high importance for these units because their purpose is to display refrigerated or frozen food to the end consumer, whereas open units may be sufficiently illuminated with external ceiling lights. (*Id.* at pp. 1–2) AHT commented that DOE's energy rating regulation does not consider the energy consumption of such external lights or the additional headload, further disadvantaging closed

units compared to open units. (*Id.* at p. 2) AHT commented that the energy consumption of open units relying on external lights is substantially higher than the test result suggests because the additional lighting is often higher than the 800 lux stated in the test procedure. (*Id.*)

AHT commented that manufacturers have already incorporated many of the proposed design options to meet current limits for HCT.SC.M/L/I and provided the example of a unit from the HCT.SC.M equipment class with around 25 ft² of TDA, which already uses high-efficiency reciprocating compressors, brushless DC condenser fan motors, variable-speed compressors, and an additional half inch of insulation to achieve the measured consumption of 1.9 kWh/24h in the test. (*Id.* at pp. 2–3)

Based on a review of these comments, manufacturer feedback, and the available equipment on the market, DOE has included lighting and additional components at the baseline for horizontal closed transparent CRE equipment in this NOPR. See chapter 5 of the NOPR TSD for additional details.

Regarding fan motors, the CA IOUs referred DOE to their comments on the July 2021 RFI in which they stated that there has been continued improvement in fan motors since energy conservation standards were last analyzed. (CA IOUs, No. 43 at p. 2) The CA IOUs expressed gratitude that DOE included electronically commutated permanent magnet motors, also known as brushless permanent magnet motors or brushless DC motors and synchronous motors; however, the CA IOUs also commented that the list of fan motor technology options analyzed for the closed-door refrigeration categories is incomplete, as shown in the CA IOUs Table 1, which lists all analyzed fan types alongside all self-contained equipment families. (*Id.* at pp. 2–3) The CA IOUs recommended that the evaporator fan technology options analyzed in the vertical closed refrigeration category also be analyzed for the horizontal closed refrigeration category. (*Id.* at p. 2) The CA IOUs stated that several horizontal glass case manufacturers offer medium- to low-temperature convertible units, suggesting that analyzing the same technology options for these two equipment classes makes sense. (*Id.*)

The Joint Commenters recommended that DOE analyze evaporator technologies for horizontal, closed CREs as DOE had done for the majority of CRE equipment classes. (Joint Commenters, No. 39 at p. 2) The Joint Commenters stated that DOE's analysis found that these evaporator-related technology

options result in significant energy savings for other equipment classes analyzed. (*Id.*) The Joint Commenters stated that they are unsure why DOE excluded evaporator technology options for horizontal closed CREs. (*Id.*)

In response to the comments from the CA IOUs and the Joint Commenters, DOE notes that the horizontal closed category (horizontal closed transparent or solid equipment classes) consists of CRE that utilize either cold-wall or forced-air evaporators depending on the equipment class. DOE observed that each primary equipment class that utilizes forced air evaporators has an evaporator fan and motor and each primary equipment class that utilizes cold-wall evaporators does not have an evaporator fan and motor. Therefore, classes with a cold-wall evaporator did not have an evaporator fan motor design option. See chapter 5 of the NOPR TSD for additional details.

The CA IOUs commented that the June 2022 Preliminary TSD analysis for several equipment categories (e.g., chef bases/griddle stands, semi-vertical open, and horizontal closed transparent) assumes shaded-pole motors as the baseline; however, the CA IOUs stated that shaded-pole motors are rarely used in new equipment in the industry and recommended that DOE analyze permanent split capacitor (“PSC”) motors as the baseline. (CA IOUs, No. 43 at p. 3) Similarly, AHRI commented that there are inconsistencies with the assumptions made regarding efficiency levels in the June 2022 Preliminary TSD: (1) the VOP.RC.M (open dairy cases) class in the baseline already have ECMs, which should have been the baseline motor, and (2) LED lighting contributing to increased efficiency. (AHRI, No. 46 at p. 2)

With respect to the comment from the CA IOUs, for chef bases or griddle stands, DOE has tentatively determined that, based on teardowns conducted in support of this NOPR, shaded-pole motors (“SPMs”) are used for fan motors in baseline equipment. See chapter 5 of the NOPR TSD for additional details.

Regarding the equipment noted by commenters, DOE has also updated baseline components in this NOPR for all equipment classes (including those components and classes mentioned by commenters) to better reflect baseline CRE. See chapter 5 of the NOPR TSD for additional detail.

Equipment Classes with Unique Energy Use Characteristics. ITW commented that, in terms of design-options compliance with the MDEC value, DOE failed to recognize that manufacturers might use other options farther down the list of compliant

design options to produce cabinets with increased heat loads due to their physical features (other than those required by a simple reach-in refrigerator), citing the following applications as examples: (1) pass-through refrigerators—cabinets with doors on both sides, providing access to stored items from either side; (2) roll-in refrigerators—cabinets with ramps and door sweeps that allow for loading of bakery carts; and (3) roll-through refrigerators—cabinets with ramps and door sweeps on both sides that allow for bakery carts to move in and out from one side to the other. (ITW, No. 41 at p. 33) ITW commented that in the 2014 TSD, DOE proposed many of the same design options to achieve compliance and manufacturers adopted many of the options, such as ECM fans and high-efficiency compressors, with the industry trending toward R–290 refrigeration systems. (*Id.*) ITW commented that DOE does not prescribe technologies; it recommends them and industry selects the technology used for compliance. (*Id.*)

NAFEM stated that it and other commenters recommended separating forced-air and cold-wall refrigeration systems into different categories, yet DOE deferred making a decision until a future proposed rule. (NAFEM, No. 40 at p. 3) NAFEM commented that the preliminary TSD stage is the appropriate stage to adopt a position on these categories and that DOE's deferral missed an opportunity for DOE to work with NAFEM members to fully understand the issues. (*Id.*)

NAFEM also commented that DOE's decision to defer accounting for different door configurations (roll-in, roll-through, and pass-through doors) presented a similar missed opportunity for DOE to work with NAFEM members. (*Id.*)

With respect to the comments from ITW and NAFEM, DOE recognizes that certain CRE equipment classes may contain equipment that utilize either forced-air evaporators or cold-wall evaporators and that certain CRE equipment classes may contain equipment that have different door configurations (e.g., roll-in, roll-through, and pass-through). Based on CCD data, information from commenters and manufacturer interviews, and DOE's directly analyzed units showing an energy use difference between certain types of CRE, DOE has tentatively determined to include separate energy use equations based on an energy use multiplier for certain equipment classes that contain CRE with unique utility. This energy use multiplier will require models with certain characteristics (e.g.,

roll-in doors, roll-thru doors, pass-thru doors, forced-air evaporators) to comply with an energy conservation standard that has a higher maximum daily energy consumption than the proposed energy conservation standard for a specific equipment class. DOE has initially determined that the energy use multipliers do not result in maximum daily energy consumptions that are higher than the current energy conservation standard for a given equipment class (*i.e.*, complying with EPCA's "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 equipment. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(1)).

In section IV.A.1.b of this NOPR, DOE proposes definitions for pass-through, roll-in, roll-through, and sliding doors. Based on CCD data, information from commenters and manufacturer interviews, and DOE's directly analyzed units showing an energy use difference

between certain types of CRE, DOE has tentatively developed an energy use multiplier for equipment classes that DOE observed CRE with pass-through, roll-in, roll-through, or sliding doors on the market. DOE has tentatively developed multipliers for pass-through, sliding, and roll-in doors (roll-through is a combination of pass-through and roll-in), which in combination account for all the different door designs currently observed on the market. See table IV.7 for additional details.

TABLE IV.7—DESCRIPTION OF EQUIPMENT CLASS MULTIPLIERS FOR UNIQUE DOOR CHARACTERISTICS

Door type	Applicable equipment classes	Equipment type coefficient	Equipment class multiplier
Pass-through	VCT.RC.M; VCT.SC.M; VCT.SC.L; VCS.SC.M; VCS.SC.L	PT	1.04
Sliding	VCT.RC.M; VCT.SC.M	SD	1.07
Pass-through and Sliding	VCT.RC.M; VCT.SC.M	SDPT	1.11
Roll-in	VCT.RC.M; VCT.SC.M; VCS.SC.M; VCS.SC.L	RI	1.05
Roll-through	VCT.RC.M; VCT.SC.M; VCS.SC.M; VCS.SC.L	RT	1.09

In section IV.A.1.b of this NOPR, DOE additionally proposes definitions for cold-wall and forced-air evaporators. Based on CCD data, information from commenters and manufacturer interviews, and DOE's directly analyzed units showing an energy use difference

between certain types of CRE, DOE has tentatively developed an energy use multiplier for equipment classes that were directly analyzed in this NOPR as CRE with a cold-wall evaporator and which DOE observed CRE with forced-air evaporators in those equipment

classes on the market. DOE has tentatively developed this multiplier to account for the additional energy use associated with a forced-air evaporator as compared to a cold-wall evaporator. See table IV.8 for additional details.

TABLE IV.8—DESCRIPTION OF EQUIPMENT CLASS MULTIPLIERS FOR UNIQUE REFRIGERATION SYSTEMS

Refrigeration system	Applicable equipment classes	Equipment type coefficient	Equipment class multiplier
Forced Air	HCS.SC.L	FA	1.2

DOE requests comment on its proposal to apply an energy use multiplier to certain equipment classes that contain CRE with unique utility and energy use characteristics. DOE additionally requests comment on the proposed multiplier values and equipment classes for which these multipliers would be applied.

b. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a "max-tech" efficiency level to represent the maximum possible efficiency for a given equipment.

After conducting the screening analysis described in section IV.B of this document and chapter 4 of the NOPR TSD, DOE considered the remaining design options in the engineering analysis to achieve higher efficiency levels. See chapter 5 of the NOPR TSD for additional detail on the design options.

Design Options beyond Baseline. In response to the June 2022 Preliminary Analysis, the CA IOUs recommended analyzing variable-speed fan control as a technology option for vertical, medium-temperature refrigerators. (CA IOUs, No. 43 at p. 2)

With respect to the recommendation from the CA IOUs, DOE has not considered variable-speed fan technology as a design option for this NOPR. For open cases, the evaporator fan must run continuously to maintain the air curtain so any variable-speed function could disrupt the air curtain. For closed cases, DOE did not receive any data to show energy use savings associated with variable-speed fan control and has tentatively determined that variable-speed fan control would not reduce energy use according to the DOE test procedure. DOE notes that it did consider evaporator fan control (*i.e.*, cycling the evaporator fan on and off as opposed to running constantly) as a

design option. See chapter 5 of the NOPR TSD for additional information.

NAFEM commented that DOE should make it easier for the public to understand how it calculates possible improvements that reduce energy consumption, providing the example of the efficiency of permanent-magnet synchronous motors (also known as synchronous-reluctance motors). (NAFEM, No. 40 at p. 6) NAFEM commented that these motors, for which NAFEM stated DOE claimed a theoretical efficiency of 75 percent, are not available in the rated wattages found in the 2022 spreadsheet, despite being the basis for two design-level options. (*Id.*)

Based on feedback during manufacturer interviews, feedback from commenters, and a review of the current market, DOE has tentatively determined to remove permanent-magnet synchronous motors (previously referred to as synchronous-reluctance motors) from the NOPR analysis because motors currently available on the market

do not span the range of CRE fan wattages and revolutions per minute needed for proper operation. For more information, see chapter 5 of the NOPR TSD.

The CA IOUs commented that the June 2022 Preliminary TSD inconsistently considered variable defrost for certain low- and medium-temperature categories. (CA IOUs, No. 43 at p. 6) As an example, the CA IOUs stated that the June 2022 Preliminary TSD analyzed variable defrost for horizontal open self-contained cases—medium temperature (“HZO.SC.M”) but not horizontal open self-contained cases—low temperature (“HZO.SC.L”). (*Id.*) The CA IOUs recommended that DOE review technology options analyzed across equipment categories for consistency and that DOE analyze variable defrost as a technology option for vertical glass door self-contained freezers (“VCT.SC.L”) and vertical solid door self-contained ice cream freezers (“VCS.SC.I”) because there are after-market controllers available to enable variable defrost in any freezer category. (*Id.*)

While DOE considered variable defrost as a design option in the June 2022 Preliminary Analysis, DOE has tentatively determined to remove this design option in the NOPR. Based on manufacturer feedback and test data, DOE has tentatively determined that there is variation across equipment classes and defrost types that would not allow for a variable-defrost control design option that is representative of each class. And based on discussions with manufacturers, all manufacturers are already controlling the defrost period on a time- or temperature-based defrost specific to each individual model to minimize the defrost time and energy consumption. For further discussion, see chapter 5 of the NOPR TSD.

AHT commented that it is unable to comprehend the listed energy-saving potentials for the different temperature classes and the values seem incorrect. (AHT, No. 48 at p. 6) AHT asked why the potential savings for variable-speed compressors, for example, are rated at 20 percent in the ice cream class, 35 percent in the low-temperature class, and zero percent in the medium-temperature class. (*Id.*)

DOE reviewed its engineering spreadsheet model and compressors analyzed and tentatively determined the discrepancy noted by AHT occurs because of the energy efficiency ratios (“EERs”) for single-speed and variable-speed compressors available on the market. Based on compressors analyzed from several manufacturers of CRE

compressors, single-speed compressors available on the market, operating at medium back pressure (“MBP”) (medium-temperature refrigerators), typically have EERs more similar to those of variable-speed compressors available on the market, operating at MBP, when compared to compressors operating at low back pressure (“LBP”) (low-temperature freezers and ice-cream freezers). This means that there is less potential energy savings for medium-temperature refrigerators that use variable-speed compressors. The difference in EERs is based on the operation of a single-speed vs variable-speed compressor, which has a significant decrease in cooling capacity as the operating temperature decreases. See chapter 5 of the NOPR TSD for additional details on the compressor analysis.

Efficiency Levels and Max-Tech. AHRI commented that DOE has not defined efficiency levels in adequate detail and recommended that DOE verify its analysis for accuracy and consistency. (AHRI, No. 46 at p. 3) NAMA commented that DOE should reduce the demands to make additional changes and acknowledge that manufacturers have already made changes that would contribute significantly to the Administration’s climate change initiatives. (NAMA, No. 37 at p. 8) NAMA stated that the actual energy savings that can be attributed to DOE’s design options in the June 2022 Preliminary TSD engineering analysis are closer to a 5–10-percent reduction from baseline energy usage after removing design options that are not technically feasible or that were accomplished years ago. (*Id.*) NAMA noted that its estimate of a 5–10-percent reduction is significantly lower than DOE’s estimate of a 41-percent reduction in energy use. (*Id.*)

DOE has considered commenters’ feedback, information gathered through manufacturer interviews, and additional testing of analysis units to update the analysis, including the efficiency levels and max tech. See chapters 3 and 5 of the NOPR TSD for a description of each design option and how each is incorporated into the NOPR analysis.

AHT commented that the limits from the March 2014 Final Rule have almost eliminated the equipment classes HCT.SC.M, HCT.SC.L, and HCT.SC.I. (AHT, No. 48 at p. 2) AHT stated that the closed units within these classes are among the most efficient food display equipment in retail stores and corresponding open units consume far more energy while being regulated less strictly. (*Id.*) AHT commented that the 72.6-percent reduction of energy

consumption for the HCT.SC.M, the 60.4-percent reduction of energy consumption for the HCT.SC.L, and the 61.6-percent reduction of energy consumption for the HCT.SC.I are impossible, and AHT recommended repeating the engineering analysis for these equipment classes. (*Id.* at p. 3–6)

DOE has considered commenters’ feedback, information gathered through manufacturer interviews, and additional testing of analysis units to update the analysis for horizontal closed transparent equipment. See chapter 5 of the NOPR TSD for additional details on the baseline specifications and design options analyzed for these equipment classes.

The Joint Commenters stated that, for several of the equipment classes analyzed, multiple models at comparable sizes in DOE’s CCD exceed the max-tech efficiency level in the engineering analysis. (Joint Commenters, No. 39 at p. 3) The Joint Commenters provided an example that DOE’s max-tech level for the representative service over counter remote condensing medium temperature (“SOC.RC.M”) unit is 14.7 kWh/day, yet there are multiple models in the CCD at a comparable size with energy consumption as low as about 10 kWh/day. (*Id.*) The Joint Commenters added that multiple models of vertical open self-contained medium temperature (“VOP.SC.M”) units significantly exceed DOE’s max-tech level of 23.5 kWh/day at similar total display areas. (*Id.*) The Joint Commenters stated that models are available beyond DOE’s max-tech levels for additional equipment classes as well and recommended that DOE set max-tech levels that are at least as high as efficiencies currently available on the market. (*Id.*)

While DOE considers the maximum efficiency level for CRE available on the market, there are certain components or technologies for equipment classes that manufacturers may choose to implement that are not directly analyzed as a design option. For example, some manufacturers may have different airflow designs for open cases that affect energy use, which are calibrated specific to a CRE model, referred to as an “air curtain”. Air curtains are only applicable on open units (such as the VOP.SC.M equipment class mentioned by the Joint Commenters) and are intended to mitigate heat infiltration into the CRE. See section IV.B.1.d of this NOPR or chapters 3 and 4 of the NOPR TSD for additional details on air curtains. DOE analyzes design options that pass the

screening criteria and have a measurable impact on CRE efficiency.

c. Engineering Spreadsheet Model

In performing the engineering analysis in the March 2014 Final Rule, DOE selected representative units for each primary equipment class to serve as analysis points in the development of cost-efficiency curves. 79 FR 17726, 17746. In selecting these units, DOE researched the offerings of major manufacturers to select models that were generally representative of the typical offerings produced within the given equipment class. *Id.* Unit sizes, configurations, and features were based on high-shipment-volume designs prevalent in the market. *Id.* Using these data, a set of specifications was developed defining a representative unit for each primary equipment class. *Id.* These specifications include geometric dimensions, quantities of components (such as fans), operating temperatures, and other case features that are necessary to calculate energy consumption. *Id.* Modifications to the units modeled were made as needed to ensure that those units were representative of typical models from industry, rather than a specific unit offered by one manufacturer. *Id.* This process created a representative unit for each equipment class with typical characteristics for physical parameters (e.g., volume, TDA), and minimum performance of energy-consuming components (e.g., fans, lighting). *Id.*

As noted in the Executive Summary of the June 2022 Preliminary Analysis, DOE analyzed the same representative volumes and TDAs developed in the March 2014 Final Rule. See 79 FR 17726, 17746. In the June 2022 Preliminary Analysis, DOE kept the same design specifications in most cases, but updated some design specifications to better match the directly analyzed units available on the market. DOE received several comments on the updates made to the engineering spreadsheet model, summarized below.

NAFEM stated that, as demonstrated in its 2015 brief,⁴⁹ errors and omissions in the engineering spreadsheet have significant effects on DOE's CRE analyses and final standards-setting process. (NAFEM, No. 40 at p. 2) NAFEM commented that its members could provide important information to DOE to improve and correct its engineering spreadsheets to make any future proposed CRE rules less controversial and more representative of

real-world applications. (*Id.* at p. 4) NAFEM stated that any concerns identified by NAFEM are only limited examples of issues it believes exist throughout the document. (*Id.*)

NAFEM stated that ITW compared the March 2014 Final Rule engineering spreadsheet to the 2022 engineering spreadsheet related to the preliminary analysis for CRE. (NAFEM, No. 40 at p. 4) NAFEM commented that the equipment classes subject to review were VCT.SC.M, VCT.SC.L, VCS.SC.M, and VCS.SC.L, which included self-contained refrigerators and freezers at medium and low temperatures with both solid and transparent vertical closed doors. (*Id.*) NAFEM commented that many of the observations provided by ITW applied to other equipment classes as well. (*Id.* at p. 5)

ITW commented that the CRE engineering spreadsheet made generalized assumptions that could be considered opinion versus facts and all product types in an equipment class are not reflected. (ITW, No. 41 at p. 2) ITW commented that the spreadsheet requires validation, that costs are inaccurate to the point of being useless, that more collaboration with manufacturers is needed, and that DOE should build confidence in the spreadsheet by making it more visible. (*Id.*)

Zero Zone commented that some of DOE's models have errors and asked that DOE share the raw data for these models, including, at minimum, the type and number of models that were reverse engineered and/or lab tested. (Zero Zone, No. 44 at p. 1)

With respect to the comments from NAFEM, ITW, and Zero Zone, DOE developed and calibrated the engineering spreadsheet model based on test data from directly analyzed units, feedback from manufacturer interviews, and market data from the CCD. DOE has also published the engineering spreadsheet model for the June 2022 Preliminary Analysis and for this NOPR. In support of this NOPR, DOE tested 70 CRE models and reverse engineered 47 CRE models. These models consisted of all equipment families within the scope of this NOPR except pull-down temperature applications, and all temperature classes. The volume range of these models is 3 ft³–69 ft³ and the TDA range is 5 ft²–32 ft².

NAFEM requested an explanation regarding the 75-percent reduction in “Infiltrated Air Mass Flow (lb/hr)” on the 2022 engineering spreadsheet under “Design Specifications” when compared with the 2014 spreadsheet. (NAFEM, No. 40 at p. 6)

ITW similarly commented that DOE failed to provide any supporting documentation, calculations, or impact analysis for updates from the 2013 and 2014 CRE engineering spreadsheets to the 2022 revision used to estimate performance in terms of Infiltrated Air Mass Flow [lb/hr] and Polyurethane Foam K-Factor [Btu*in/ft²h°F]. (ITW, No. 41 at p. 18) ITW commented that some design specifications listed in table 5A.2.5 through table 5A.2.8 were updated in the June 2022 Preliminary TSD while other changes received only brief commentary, such as “Improved Resistivity of Insulation” found in section 3.3.1.1 concerning polyurethane foam. (*Id.*) ITW further commented that this issue was discovered at the end of the comment period and that said comment period required extension because the changes do not represent a thermal efficiency improvement for polyurethane foam insulation. (*Id.*) ITW questioned why two differing methods were used to calculate the “Conduction Through Walls and Solid Doors [Btu/hr]” and requested justification for the change, stating that one formula in the spreadsheet or the other could be correct, but not both. (*Id.*)

ITW added that DOE spent considerable time in 2013 and 2014 developing the energy consumption model and calculating the right values for Infiltrated Air Mass Flow [lb/hr], working with manufacturers' detailed specifications, calculating sensible and latent heat loads due to infiltration, and reviewing and revising the infiltrated air mass flow values for certain equipment classes, including VCT and VCS based on stakeholder feedback. (*Id.* at pp. 18–23) ITW commented that, by contrast, in the 2022 CRE engineering spreadsheet, DOE made significant changes to the Infiltrated Air Mass Flow value for 17 different equipment classes, including VCT and VCS models, without an explanation other than DOE did update design specifications. (*Id.* at p. 23) ITW stated that the formulas used to calculate the “Load Due to Infiltration [Btu/hr]” on the engineering spreadsheet tab “Calculations” and the CRE cabinet specification have not changed from 2014. (*Id.*) ITW summarized its comment by stating DOE needed to explain this discrepancy or recalculate the 17 classes with revised or reverted values for Infiltrated Air Mass Flow [lb/hr]. (*Id.*) ITW concluded that its calculations resulted in the following assumptions: (1) DOE underestimated by 28 percent the theoretical quantity of heat (BTU/hr) infiltrating the representative 49 (cu ft) VCS.SC.M model during the 2014 CRE

⁴⁹ NAFEM included its 2015 brief in addition to their comment responses. NAFEM specifically referenced pp. 35–51 for this comment.

rulemaking; (2) DOE would overstate a decline in thermal performance for the foam insulation by 25 percent for the same model in the June 2022 Preliminary TSD; (3) if 1 and 2 were correct, DOE would need to correct its energy use model for all equipment classes; and (4) discrepancies in DOE's own parameter Conduction Through Walls and Solid Doors [Btu/hr] between the 2014 TSD and the June 2022 Preliminary TSD should have been flagged for further explanation and discussion in the June 2022 Preliminary TSD. (*Id.* at pp. 25–26)

ITW commented that DOE discarded specific data when faced with energy consumption values above the MDEC for the baseline unit in the 2022 engineering spreadsheet, instead calculating new values for the baseline unit and not DOE's own energy model. (*Id.* at p. 34) ITW questioned whether DOE trusted its engineering spreadsheet. (*Id.*)

Based on comments received from NAFEM and ITW, DOE has re-evaluated the infiltrated air-mass flow and insulation design specifications in this NOPR. Based on feedback provided from manufacturers during manufacturer interviews, DOE updated the infiltrated air-mass flow and insulation design specifications in this NOPR to be more consistent with the March 2014 Final Rule. See chapter 5 of the NOPR TSD for additional details.

Zero Zone commented that the fraction of power into case for evaporator motors is missing. (Zero Zone, No. 44 at p. 3) Zero Zone stated that this heat load is illustrated in the component load in the model diagram tab but not included in the daily energy consumption calculations. (*Id.*)

DOE reviewed the engineering spreadsheet model published to the docket⁵⁰ and found that this calculation was included (see the “Calculations” tab, row 176).

ITW commented that to review data in the CRE engineering spreadsheets, the Excel macros needed to function, but the 2013 and 2014 CRE engineering spreadsheet macros were not found to be executable in Excel using a 64-bit Windows 10 computer and instead required Excel running on a 32-bit WindowsNT machine. (ITW, No. 41 at p. 6)

In response to the comment from ITW, DOE notes that the data and formulas are reviewable regardless of the version of the Windows operating system being used because the macros

do not affect the underlying data and formulas.

d. Industry Trade Association Survey

In response to the June 2022 Preliminary Analysis, three industry trade associations surveyed their members to provide feedback to DOE on the June 2022 Preliminary Analysis. The survey is located on the docket,⁵¹ and DOE has provided a summary of the engineering-related results of the survey.

AHRI, NAMA, and NAFEM stated that more than 50 percent of the data in the survey was shared by small businesses (<1250 employees). (Trade Associations Survey, No. 50 at p. 8) The manufacturers surveyed manufacture all equipment types (to varying degrees) directly analyzed in the June 2022 Preliminary Analysis, besides VCT.SC.I equipment. (*Id.* at pp. 9–10)

The survey provided a heat map of design options currently used across different equipment classes. (*Id.* at p. 11) AHRI, NAMA, and NAFEM noted that all members reported using LED lighting and are unaware of any higher-efficiency lighting that could be incorporated into their equipment. (*Id.*) DOE notes that, based on the survey, all design options besides vacuum-insulated panels are currently used by at least a small percentage of the market, but many technologies are used by less than 50 percent of manufacturers surveyed. (*See Id.*)

AHRI, NAMA, and NAFEM provided a chart asking manufacturers why certain design options were not used. (*Id.* at p. 12) The responses included: “not economically justified,” “reduced utility,” “not technologically feasible,” “limited market (not as desirable),” “already in use to meet current ECS,” and “option not available for this equipment.” (*Id.*) AHRI, NAMA, and NAFEM added that the most common response was that the design options were already in use by manufacturers, and the second most common response was that those design options not already in use were not economically justified. (*Id.*)

AHRI, NAMA, and NAFEM stated that some manufacturers identified ways to use design options to meet EL 1–3 proposed in the June 2022 Preliminary Analysis; however, no manufacturers thought EL 4–6 was feasible for any equipment class. (*Id.* at p. 14) As a follow up to what ELs manufacturers thought were appropriate, AHRI, NAMA, and NAFEM stated that manufacturers responded

that a 1-percent increase in energy efficiency over today's levels would be acceptable, and numerous responses stated that max tech has already been achieved. (*Id.* at p. 15)

AHRI, NAMA, and NAFEM commented that manufacturers reported using the most energy-efficient foam insulation available, with an average K factor of 0.15. (*Id.* at p. 19) AHRI, NAMA, and NAFEM stated that manufacturers primarily use high-pressure, two-component foam systems, with the remainder using an application technique, such as foam boards and spray polyurethane foam insulation. (*Id.*) AHRI, NAMA, and NAFEM noted that refurbished equipment is not reinsulated to meet the current standard. (*Id.*) AHRI, NAMA, and NAFEM also commented that increased thickness either increases the cabinet footprint or decreases internal dimensions in cases, making them more costly for consumers, especially for equipment replacement, which would require a redesign of the architecture of the store. (*Id.*) AHRI, NAMA, and NAFEM commented that survey respondents stated that increased insulation thickness would require a new foam mixture, as well as tooling and design changes, and decrease the display/storage area or increase the footprint of the equipment. (*Id.* at p. 20)

AHRI, NAMA, and NAFEM noted that survey respondents indicated that VIPs could not be incorporated into the foam matrix without early failures, raising concerns that VIPs are not a viable design option. (*Id.* at p. 19)

DOE has considered the results of this survey as part of its NOPR engineering analysis.

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 equipment, and the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

- **Physical teardowns:** Under this approach, DOE physically dismantles a commercially available equipment, component by component, to develop a detailed bill of materials for the equipment.

- **Catalog teardowns:** In lieu of physically deconstructing equipment, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance

⁵⁰ See www.regulations.gov/document/EERE-2017-BT-STD-0007-0032.

⁵¹ See www.regulations.gov/document/EERE-2017-BT-STD-0007-0050.

repair websites, for example) to develop the bill of materials for the equipment.

- *Price surveys:* If neither a physical nor catalog teardown is feasible (e.g., for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (e.g., large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using physical and catalog teardowns. See chapter 5 of the NOPR TSD for additional details.

DOE received several comments in response to the June 2022 Preliminary Analysis related to the manufacturer production costs (“MPCs”).

NAFEM commented that it compared inflation index and cost model values in DOE’s engineering spreadsheets with ITW’s own calculations for the same values. (NAFEM, No. 40 at p. 5) NAFEM stated that significant discrepancies existed between DOE’s and ITW’s calculations of the inflation index for evaporator and condenser fan motors, evaporator coil, condenser coil, insulation, and core case cost. (*Id.*)

NAFEM commented also that it found inaccuracies in DOE’s calculations used for a cost analysis of design-level technology options. (*Id.* p. 5) For example, according to NAFEM, the simulated condenser and evaporator coil costs for self-contained models were off or low by 250 percent and the costs for evaporator and condenser fan blades were off by more than 300 percent, having not been updated since before DOE published the March 2014 Final Rule. (*Id.*)

NAFEM commented that it reviewed the calculations and assumptions for DOE’s energy analysis at the 16 design option levels, and NAFEM noted that ITW would supply DOE with a current inflation rate for review as a cost structure update for 2022. (*Id.* at pp. 5–6)

NAMA commented that it conducted an analysis of the effect of present inflation levels on the cost of components, summarizing the results of its analysis in a table showing the major components in efficiency compared with cost increases from October 2020 to April 2021 and from October 2021 to April 2022. (NAMA, No. 37 at pp. 13–14) NAMA recommended that DOE factor in the unprecedented inflation of basic constituents in CRE machines into the costs shown for design options and into the economic analysis. (*Id.* at p. 14)

ITW presented several examples of spreadsheet data comparing the 2014 TSD and June 2022 Preliminary TSD engineering spreadsheets. (ITW, No. 41 at pp. 36–47) ITW noted that, for all evaluations, MPC appeared to be down in 2022 relative to the 2014 reference, but the 2022 engineering spreadsheet did not reflect actual market changes, and when specifications and ordering were held to the 2014 reference, energy was up. (*Id.* at p. 37) ITW summarized that, as a result, the 2014 and 2022 engineering spreadsheets did not appear to have a strong correlation. (*Id.*)

AHRI commented that the baseline case should be modified to reflect current market prices, including the use of LEDs and energy-efficient doors, enhanced frames, and ECM fan motors. (AHRI, No. 46 at p. 6) AHRI commented that components were incorporated and upgraded to meet DOE’s previous CRE energy-efficiency requirements and that the no-standards-case efficiency distribution will need to be amended based on those corrections. (*Id.*) AHRI stated that prices of various design options need to be upgraded for the no-standards-case efficiency distribution. (*Id.*)

ITW commented that, in DOE’s engineering analysis in the June 2022 Preliminary TSD, DOE failed to establish an accurate baseline cost and, as a result, justification for any change to the MDEC was suspect to bias and/or error. (ITW, No. 41 at pp. 27–28) ITW commented that costs have not fallen by 12.4 percent or even remained flat as stated in the June 2022 Preliminary TSD, section 5.6 Core Case Costs, and that, in fact, costs have risen by up to 24.9 percent. (*Id.* at p. 28) ITW commented that it cannot make determinations or move forward without correcting the cost issue found in the June 2022 Preliminary TSD, considering that costs have not gone down since 2013 or 2014. (*Id.*)

In response to these comments, DOE has updated the NOPR analysis to reflect current inflation rates (*i.e.*, 2022 dollars) and component and design option costs based on feedback from commenters, feedback from manufacturer interviews, a review of market data, and teardowns of directly analyzed units. See chapter 5 of the NOPR TSD for additional details.

NAFEM commented that DOE should make it easier for the public to understand how it calculates possible improvements that reduce energy consumption. (NAFEM, No. 40 at p. 6) NAFEM identified the costs of microchannel condenser coils as an example where it believes improved clarity would be beneficial. (*Id.*)

With respect to the comment from NAFEM, DOE has further described the cost and efficiency assumptions for each design option, including microchannel condensers, in chapter 5 of the NOPR TSD.

NAMA commented that it found errors in the June 2022 Preliminary TSD for design options as follows: (a) high-efficiency reciprocating compressor for VCS.SC.M is shown at a cost of \$9.23 but for VCT.SC.M it is shown as \$4.01; (b) UA evaporator coil is shown for VCT.SC.H at \$16.01 but for VCT.RC.M is \$65.84, for VCS.SC.M is \$14.33 and for VCT.SC.M is \$22.90; (c) variable-speed compressor for VCS.SC.M is \$72.54, for VCT.SC.M is \$79.27 but for VCT.SC.L is \$168.34; and (d) VIG door for VCT.SC.M is \$837.38 but for VCT.RC.M is projected at \$2,095.84. (NAMA, No. 37 at pp. 10–11) NAMA requested DOE’s justification for variations in the cost of the same component and further stated that this rulemaking should be withdrawn and replaced with accurate estimates, particularly for machines under 30 cubic feet in capacity. (*Id.* at p. 12)

With respect to the comment from NAMA, DOE assigns design specifications and costs for each equipment class based on a representative volume or TDA. Therefore, components may be a different size or capacity than other equipment classes, which likely yields a different cost. DOE expects that the different representative volumes or TDAs account for the differences described by NAMA. For example, the VCT.SC.M primary equipment class analyzed has 2 doors, whereas the VCT.RC.M primary equipment class analyzed has 5 doors. For more information on the design option costs, see chapter 5 of the NOPR TSD.

To account for manufacturers’ non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (“MSP”) is the price at which the manufacturer distributes a unit into commerce. DOE developed an industry average manufacturer markup by examining the prior CRE rulemaking and annual Securities and Exchange Commission (“SEC”) 10-K reports⁵² filed by publicly traded manufacturers primarily engaged in commercial refrigeration manufacturing and whose combined equipment range includes CRE. 79 FR 17725, 17758. See section IV.J.2.d of this

⁵² U.S. Securities and Exchange Commission’s Electronic Data Gathering, Analysis, and Retrieval system is available at www.sec.gov/edgar/searchedgar/companysearch (last accessed March 30, 2023).

document and chapter 12 of the NOPR TSD for additional information on the manufacturer markup.

DOE seeks comment on the method for estimating manufacturing production costs.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or “curves”) in the form of daily energy consumption (in kWh) versus MPC (in dollars). DOE developed curves representing the primary equipment classes. The methodology for developing the curves started with determining the energy consumption for baseline equipment and MPCs for this equipment. Above the baseline, design options were implemented until all available technologies were employed (*i.e.*, at a max-tech level). See chapter 5 of the NOPR TSD for additional detail on the engineering analysis and appendix 5B of the NOPR TSD for complete cost-efficiency results.

In response to the June 2022 Preliminary Analysis, the Joint Commenters recommended that DOE evaluate additional, intermediate-efficiency levels for certain equipment classes that fall between the downstream efficiency levels currently analyzed. (Joint Commenters, No. 39 at p. 4) The Joint Commenters commented that EL 5 for the VCS.SC.M equipment class is cost effective but EL 6 is not; however, an intermediate level between EL 5 and EL 6 (a so-called “EL 5.5”) could be cost effective. (*Id.*) The Joint Commenters stated that they provided a table (table 1) showing examples of classes in which an intermediate efficiency level may be cost effective. (*Id.*)

NAMA stated that DOE had requested comments on the design options for each equipment class, but provided very little information on which commenters can base comments. (NAMA, No. 37 at p. 10) NAMA provided a detailed review of each of the design options considered by DOE in annex A to its comment and commented that DOE estimated that options AD4, 8, 9, 11, 12, and 13 in table 5.8.8 (results for VCT.SC.M) each have energy savings of less than 3 percent. (*Id.* at pp. 10, 21–40) NAMA further stated that the change suggested by AD4 is not possible. (*Id.* at p. 10) NAMA commented that for other options, the savings potential is very small despite being extremely expensive, even using DOE’s estimates, which NAMA stated are erroneous. (*Id.*) NAMA stated that it provided significantly different energy savings and cost estimates that it

believes to be more accurate than those provided by DOE. (*Id.*)

In response to the comments from the Joint Commenters and NAMA, DOE updated the EL structure in its NOPR analysis to better reflect the cost-effective design path that manufacturers can take to achieve the ELs. DOE notes that design options are typically ordered by cost effectiveness, which may result in design options with low energy savings and high costs at the end of the design option order. DOE has updated the NOPR analysis based on comments received and manufacturer interview feedback. DOE provides additional details on design options in chapters 3–5 of the NOPR TSD.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.*, wholesaler 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 equipment to cover business costs and profit margin.

In the June 2022 Preliminary Analysis, DOE considered the following distribution channels:

1a. Contractor channel with replacement (Manufacturer → Wholesaler → Mechanical Contractor → Consumer)

1b. Contractor channel with new construction (Manufacturer → Wholesaler → Mechanical Contractor → General Contractor → Consumer)

2. Wholesale channel (Manufacturer → Wholesaler → Consumer)

3. National account channel (Manufacturer → Consumer).

Following the June 2022 Preliminary Analysis, AHRI suggested that DOE should revise several channels, create a fourth channel for reused or refurbished equipment, and refer to consumers as “end-users” because the term consumer may imply individuals or families. (AHRI, No. 46 at pp. 3–4) AHRI also recommended DOE to include other CRE purchaser categories, such as buyer’s clubs, restaurant consortiums, food service consultants, and governmental bids. (*Id.*) Further, in the Trade Associations Survey, some manufacturers proposed including an additional channel under channel 2 for OEM to OEM that “moves through a supply chain similarly to a wholesaler.” (Trade Associations Survey, No. 50 at p. 24)

In consideration of the AHRI feedback, DOE included an additional

national account channel in which manufacturers sell the equipment to contractors, who in turn sell the equipment to end users. With regard to the suggested addition of distribution channels for reused or refurbished equipment, DOE notes that the markup analysis only pertains to new equipment purchases; therefore, DOE did not consider such distribution channels in the markups analysis. However, refurbishments were considered in the LCC analysis (see section IV.F of this document for details). In the Trade Associations Survey, no market share inputs were provided for the OEM-to-OEM channel. As a result, DOE did not consider this in the final distribution channels. DOE re-estimated the market shares of distribution channels based on manufacturer inputs from the Trade Associations Survey. DOE clarifies that it considers all purchasers of CRE in its analyses and is using the term CRE “purchaser” and “consumer” interchangeably in this document.

The CA IOUs commented that DOE should separate distribution channels by condensing unit configuration. (CA IOUs, No. 43 at p. 6) The CA IOUs stated that there are differences in the sales structure for remote-condensing and self-contained equipment that necessitate a separate pricing analysis. (*Id.*)

DOE acknowledges that equipment with different condensing unit configurations would have different applications and thus different sales structures. In the markups analysis, DOE contends that each equipment type (*e.g.*, display cases and solid-door equipment) consists of equipment with different condensing unit configurations, and their relative pricing structures are already reflected through the channels market shares. For example, the display-case equipment type is represented by a higher fraction of remote-condensing units used in large grocery store chains; hence, a greater share of shipments go through the national account channel, which provides better price advantages.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of equipment 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 and amended standards.⁵³

DOE developed baseline and incremental markups for wholesalers and contractors using U.S. Census Bureau data from the 2017 Annual Wholesale Trade Report and the 2017 U.S. Economic Census, respectively.

DOE requests comment on the CRE distribution channels and overall on the markups analysis.

Chapter 6 of the NOPR TSD provides details on DOE's development of the markups analysis for CRE.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of CRE at different efficiencies in representative U.S. commercial buildings, and to assess the energy savings potential of increased CRE efficiency. The energy use analysis estimates the range of energy use of CRE 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 CRE, DOE calculated the energy consumption of the equipment as part of the engineering analysis (see chapter 5 of the NOPR TSD).

DOE requests comment on its approach for the energy use analysis.

Chapter 7 of the NOPR TSD addresses DOE's energy use analysis for CRE.

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 CRE. The effect of new and amended energy conservation standards on individual purchasers 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 equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts

future operating costs to the time of purchase and sums them over the lifetime of the equipment.

- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment 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 CRE in the absence of new and amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of commercial buildings that use CRE. DOE developed commercial buildings samples from the DOE EIA's 2018 Commercial Buildings Energy Consumption Survey ("2018 CBECS").⁵⁴ DOE divided the 2018 CBECS sample into building types characterized by their principal building activity (CBECS variable "PBA") using a subset of the data that excluded vacant buildings. DOE then grouped building types into six categories: (1) large food sales, (2) small food sales, (3) large food service, (4) small food service, (5) large other, and (6) small other. DOE defined small buildings as those less than or equal to 5,000 ft², while large buildings are defined as those greater than 5,000 ft². For each sample commercial building, DOE determined the energy consumption and the appropriate energy price of CRE. By developing a representative sample of CRE purchasers, the analysis captures the variability in energy prices associated with the use of CRE.

Inputs to the calculation of total installed cost include the cost of the equipment—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,

equipment lifetimes, and discount rates. DOE created distributions of values for equipment 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 CRE user samples. For this rulemaking, DOE conducted probability analyses by randomly sampling from probability distributions using Python. To calculate the LCC and PBP for CRE, DOE performed 10,000 Monte Carlo simulations for each variable. During a single trial, random values are selected from the defined probability distributions for each variable, which enables the estimation of LCC and PBP with uncertainty evaluation. 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 purchaser, equipment efficiency is chosen based on its probability. If the chosen equipment 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 equipment, DOE avoids overstating the potential benefits from increasing equipment efficiency.

DOE calculated the LCC and PBP for consumers of CRE as if each were to purchase new equipment in the expected year of required compliance with new and amended standards. New and amended standards would apply to CRE manufactured 3 years after the date on which any new and amended standards are published. (42 U.S.C. 6313(c)(6)(C)(i)). At this time, DOE estimates publication of a final rule in the second half of 2024. Therefore, for purposes of its analysis, DOE used 2028 as the first full year of compliance with any amended standards for CRE.

Table IV.9 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 Python model,

⁵³ 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.

⁵⁴ U.S. Department of Energy—Energy Information Administration. 2018 Commercial

Buildings Energy Consumption Survey (CBECS). 2018. Available at www.eia.gov/consumption/commercial/data/2018/ (last accessed February 1, 2023).

and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.9—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Equipment Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Apply price learning between present (2022) and compliance year (2028) for LED lighting and variable-speed compressor electronics, using historical data to derive a price scaling index to project equipment costs for those components.
Installation Costs	Assumed not to change with efficiency level and, therefore, not considered in the LCC and PBP analyses.
Annual Energy Use	Obtained from the test procedure for each equipment class at each considered efficiency level.
Energy Prices	Electricity: Edison Electric Institute Typical Bills and Average Rates reports. Variability: Regional energy prices across nine census divisions.
Energy Price Trends	Based on AEO2023 ⁵⁵ price projections.
Repair and Maintenance Costs ...	Material costs derived from the engineering analysis and labor costs derived from RS Means 2023. Assumed additional labor time for maintaining equipment with microchannel heat exchangers; considered replacement of LED lighting, evaporators, condensers, and compressors; assumed LED lighting repair frequency decreases due to the presence of occupancy sensor.
Equipment Lifetime	Average: 10 years for large businesses and 20 years for small buildings.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered equipment or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2028.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Equipment Cost

To calculate consumer equipment 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 equipment and higher-efficiency equipment because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

DOE used a price learning analysis to account for changes in LED lamp prices that are expected to occur between the time for which DOE has data for lamp prices (2022) and the assumed compliance date of the rulemaking (2028). See chapter 8 of the NOPR TSD for more details on how price learning for LED lighting was applied.

In response to the June 2022 Preliminary Analysis, the Joint Commenters noted that while DOE included price trends for lighting design options, other design options, such as variable-speed compressors and high-efficiency fans were not included, and the Joint Commenters encouraged DOE to incorporate price trends for additional CRE design options. (Joint Commenters, No. 39 at p. 5)

As discussed in section IV.C of this document, DOE included variable-speed compressors as a technology option for

higher efficiency levels in certain equipment classes. To develop future prices specific for that technology, DOE applied a different price trend to the electronic control board of the variable-speed compressor. DOE estimated that the cost of that control board was 50 percent of the cost of the variable frequency drive (“VFD”) included in the variable speed compressor. DOE used Producer Price Index (“PPI”) data on “semiconductors and related device manufacturing” between 1967 and 2021 to estimate the historic price trend of electronic components in the control.⁵⁶ The regression, performed as an exponential trend line fit, results in an R-square of 0.99, with an annual price decline rate of 6.5 percent. See chapter 8 of the TSD for further details on this topic.

DOE requests comment on its price learning assumptions and methodology.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment.

In response to the June 2022 Preliminary Analysis, the CA IOUs commented that DOE overestimated installation costs for self-contained equipment compared to remote condensing equipment. (CA IOUs, No. 43 at p. 7) DOE notes that, in the LCC and PBP, such costs were assumed not to vary by EL within the same

equipment class, and, therefore, were not considered in the June 2022 Preliminary Analysis.

AHRI commented that more efficient equipment can be more expensive to install and may require more time to set up due to additional programming, equipment size changes with type of insulation used, and technician training. (AHRI, No. 46 at p. 5) Thus, AHRI concluded that installation cost may change with efficiency level. (*Id.*) Similarly, AHRI, NAMA, and NAFEM commented that adding components to CRE and increasing their energy efficiency would lead to increased installation costs due to additional programming time and floor space rearrangement needs. (Trade Associations Survey, No. 50 at p. 25) AHRI, NAMA, and NAFEM also stated that technicians require additional technical training to install such equipment. (*Id.*)

In response to these comments, DOE found no evidence that any of the analyzed design options considered in this NOPR require additional installation time. DOE estimates that installation workers may already have the required skills to install the analyzed design options or would adjust their labor rates equally across all efficiency levels if necessary skills are lacking. Therefore, as in the June 2022 Preliminary Analysis, DOE assumed that installation costs do not vary by efficiency level (within the same equipment class) and did not account for installation costs in the LCC and PBP analyses.

⁵⁵ For further information, see the Assumptions to AEO2023 report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at www.eia.gov/outlooks/aeo/assumptions/ (last accessed March 30, 2023).

⁵⁶ Semiconductors and related device manufacturing PPI series ID: PCU334413334413; www.bls.gov/ppi/.

DOE requests comment and data to inform how any of the analyzed design options would require additional installation time, training, or other related skills compared to the baseline equipment.

3. Annual Energy Consumption

For each equipment class, DOE determined the annual energy consumption for each sample equipment user of CRE at different efficiency levels using the approach described 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 equipment 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 for each census division using data from Edison Electric Institute (“EEI”) Typical Bills and Average Rates reports. 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 commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).⁵⁷

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 CRE, DOE calculated weighted-average values for average and marginal price for the nine census divisions for the commercial sector for both large-size (greater than 5,000 ft²) and small-size (less than 5,000 ft²) buildings. As the EEI data are published separately for summer and winter, DOE calculated seasonal prices for each division and sector. Each EEI utility in a given region was assigned a weight based on the

number of consumers it serves. DOE adjusted these regional weighted-average prices to account for systematic differences between investor-owned utilities (“IOUs”) and publicly owned utilities (“POUs”), as the latter are not included in the EEI data set. See chapter 8 of the NOPR TSD for details.

To estimate energy prices in future years, DOE multiplied the 2022 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2023*, which has an end year of 2050.⁵⁸ To estimate price trends after 2050, a simple average of the 2046–2050 values was used for 2051 and all subsequent years.

5. Repair and Maintenance Costs

Repair costs are associated with repairing or replacing equipment components that have failed in an appliance or equipment; maintenance costs are associated with maintaining the operation of the equipment. Typically, small incremental increases in equipment efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency equipment. DOE does not account for lost time when CRE fails or breaks, as DOE does not have data indicating how that would affect outcomes considered in the LCC, such as operating cost. In the June 2022 Preliminary Analysis, DOE calculated repair costs by considering the typical failure rate of refrigeration system components (compressor, lighting, and evaporator and condenser fan motors), component MPCs and associated markups, and the labor cost of repairs, which is assumed to be performed by private vendors. As discussed in sections 8.3.3 and 8.3.4 of the June 2022 Preliminary Analysis TSD, DOE considered the following specific CRE components and associated failure probabilities during typical CRE lifetime in its repair cost approach: compressor (25 percent), evaporator fan motor (50 percent), condenser fan motor (25 percent), and LED lighting (100 percent), with the presence of occupancy sensors decreasing LED lighting repair frequency by half.

In response to the June 2022 Preliminary Analysis, Continental commented that microchannel condenser coils require more frequent cleaning due to the accumulation of debris and are more susceptible to corrosion and leaks, which often requires replacement. (Continental No.

38 at p. 2) And AHRI stated that microchannel condenser coils require more frequent cleaning. (AHRI, No. 46 at pp. 5–6)

In response to these comments regarding the impact of microchannel condenser coils on repair and maintenance costs and based on feedback from manufacturer interviews, DOE agrees with commenters that microchannel condenser coils are subject to more accumulation of debris, which may result in extended cleaning time. However, DOE found no evidence that microchannel condenser coils may be more susceptible to corrosion and leaks, or that these problems are not repairable with similar labor and material inputs as baseline units. Accordingly, DOE has updated its maintenance costs of equipment with microchannel condenser coils to account for an additional 10 minutes of annual cleaning.

Continental commented that controls for defrost, lighting, and anti-sweat heaters can be challenging for technicians to diagnose and fix, leading to additional labor time and material replacement costs. (Continental No. 38 at p. 2) AHRI, NAMA, and NAFEM commented that adding higher-efficiency CRE components leads to increased repair and maintenance costs due to the component purchase price and labor time. (Trade Associations Survey, No. 50 at p. 26)

With respect to the comments from Continental and AHRI, NAMA, and NAFEM, DOE clarifies that neither vacuum-insulated panels nor controls for defrost and anti-sweat heaters are considered design options. DOE did not consider preventative maintenance for other design options, such as lighting occupancy sensors and night curtains, because DOE assumed they have similar average lifetimes to the equipment in which they are installed.

AHRI commented that additional labor costs should be considered for flammable refrigerants. (AHRI, No. 46 at p. 15) AHRI, NAMA, and NAFEM commented that equipment using alternative refrigerants (R–290) should have higher repair costs because leaks are harder to detect. (Trade Associations Survey, No. 50 at p. 26) DOE reiterates in response that equipment classes are analyzed individually and all analyzed self-contained equipment classes use R–290, so there are no refrigerant changes by efficiency level.

AHRI commented that labor shortages have caused an increase in servicing costs. (AHRI, No. 46 at p. 15) AHRI, NAMA, and NAFEM commented that there is a shortage of qualified service technicians for CRE in the United States

⁵⁷ 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. Available at ees.lbl.gov/publications/non-residential-electricity-prices (last accessed March 9, 2023).

⁵⁸ EIA. *Annual Energy Outlook 2023*. Available at www.eia.gov/outlooks/aeo/ (last accessed March 28, 2023).

and higher standards would exacerbate the issue and lead to longer equipment downtimes for food retailers. (Trade Associations Survey, No. 50 at p. 30) In response to these comments, DOE clarifies that short-term labor supply variations are not included in its analysis because economic theory maintains that labor markets are expected to adjust in the long-term period considered in the LCC analysis.

DOE requests comment and data on its assumptions and approach regarding consideration of repair and maintenance costs in the LCC and PBP analyses. Specifically, DOE requests data on the expected lifetimes and repair and maintenance frequencies of the considered design options in this NOPR.

6. Equipment Lifetime

DOE used a lifetime distribution to characterize the probability that CRE will be retired from service at a given age. For the June 2022 Preliminary Analysis, consistent with the approach followed in the March 2014 Final Rule, which was based on discussions with industry experts, DOE had assumed that lifetime of CRE is correlated to the frequency of store renovations. DOE had also estimated an average lifetime of 10 years for all large-size and small food-service buildings and 15 years for small food-sales buildings, and other businesses with CRE (per the CBECS sample) correlating such buildings with businesses that may have longer renovation cycles, such as independent grocery stores.⁵⁹ DOE also assumed that the probability function for the annual survival of CRE would take the form of a Weibull distribution. A Weibull distribution is a probability distribution commonly used to measure failure rates.⁶⁰ Further, in the June 2022 Preliminary Analysis, due to lack of data to suggest otherwise, DOE had assumed that retired but functional CRE had low salvage value and that the refurbished/used market for CRE was negligible. Therefore, DOE had not considered such CRE in the LCC analysis.

In response to the June 2022 Preliminary Analysis, AHRI commented that smaller businesses use their equipment for 15–25 years due to the cost of upgrading. (AHRI, No. 46 at p. 6) AHRI added that, in some cases, compressor racks may be used for 30–40 years, while display cases are switched out once during this time. (*Id.*) AHRI commented that businesses

replacing CRE may also buy used equipment or “reskin” equipment by changing out sheet metal panels and bumpers. (*Id.*) NAMA recommended that DOE estimate the number of refurbished machines with an increased energy usage versus refurbished energy-compliant ones. (NAMA, No. 37 at p. 16)

Based on these comments, DOE has adjusted the mean lifetime distribution assumption for CRE to 10 years for large-size buildings and 20 years for small-size buildings, with a maximum lifetime of 40 years for each. DOE clarifies that it does not analyze the energy use of refurbished CRE because such equipment is not subject to new standards. However, DOE accounted for purchasers who sell their CRE to a refurbisher before the end of the equipment lifetime, by assigning a credit equivalent to the residual value of the used equipment at the selling year. See the following section (IV.F.7) for details on the residual value approach.

DOE requests comment and data regarding the CRE lifetime assumptions and methodology.

See chapter 8 of the NOPR TSD for more information.

7. Residual Value

To model the phenomenon of CRE sold for refurbishment, DOE utilized a residual value for such equipment in the LCC. The residual value represents the remaining dollar value of surviving CRE at the average age of refurbishment, estimated to be 5 years for small-size food service buildings (e.g., restaurants) and 10 years for small-size food sales and other commercial buildings. To account for the value of CRE with remaining life to the consumer, the LCC model applies this residual value as a “credit” at the end of the CRE lifetime and discounts it back to the start of the analysis period. Per manufacturer feedback, this was only applied to a fraction of self-contained CRE in small buildings, totaling about 10 percent of all CRE in the LCC sample.

DOE requests comment and data on the assumed business types and the corresponding CRE lifetimes at which refurbishment may occur.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to commercial consumers to estimate the present value of future operating cost savings.

For purchasers of CRE in the commercial sector, DOE used the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most

companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. This corporate finance approach is referred to as the weighted-average cost of capital. DOE used currently available economic data in developing commercial discount rates, with Damodaran Online being the primary data source.⁶¹ The weighted-average discount rates for the commercial sector for CRE is 6.4 percent.

See chapter 8 of the NOPR TSD for further details on the development of discount rates.

9. 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 equipment 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 CRE for 2028, DOE used test data, feedback from manufacturer interviews, surveys (*see* Trade Associations Survey, No. 50), and the Single Compartment Commercial Refrigeration Equipment data from DOE’s CCMS, accessed in March 2023.⁶² As discussed in the engineering analysis, DOE assumed that all manufacturers will switch to R-290 in response to the December 2022 EPA NOPR, a proposed rule to restrict use of certain HFC refrigerants in specific equipment, including CRE. The EPA compliance date is 2025, which is earlier than the expected DOE CRE ECS compliance date of 2028. This approach reduces the potential maximum energy savings below the baseline compared to the June 2022 Preliminary Analysis.

To create a robust sample for the energy efficiency distribution used in the LCC analysis, DOE grouped the 28 CRE equipment classes into 21 separate groups. For the equipment classes that DOE relied on CCMS model count data

⁶¹ Damodaran, A. Data: Cost of Capital by Industry Sector, United States. 2023. (Last accessed March 1, 2023.) <http://pages.stern.nyu.edu/~adamodar/>.

⁶² U.S. Department of Energy. Compliance Certification Management System (CCMS) for Refrigeration Equipment—Commercial, Single Compartment. Available at www.regulations.doe.gov/certification-data/CCMS-4-Refrigeration_Equipment_-_Commercial_Single_Compartment.html#q=Product_Group_s%3A%22Refrigeration%20Equipment%20-%20Commercial%2C%20Single%20Compartment%22 (last accessed April 4, 2023).

⁵⁹ See section 8.3.5 of the June 2022 Preliminary Analysis TSD and section 8.2.3.5 of the March 2014 Final Rule TSD for details.

⁶⁰ Weibull distributions are commonly used to model appliance lifetimes.

to formulate the efficiency distributions, this approach was used to allow equipment classes with a limited sample to share the efficiency distribution of a group of similar classes with a larger sample in the CCMS. DOE compared energy use data from the CCMS with energy use equations from the engineering analysis to derive model counts at each efficiency level. Equipment classes whose efficiency distributions were derived from aggregated data from manufacturer interviews, surveys, and test data were assigned their own groups. The estimated market shares for the no-new-standards case for CRE and the

corresponding groupings are shown in table IV.10. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

In response to the June 2022 Preliminary Analysis, Continental commented that DOE's approach to derive the no-standards-case efficiency distribution by relying on manufacturer model counts in the CCMS database is erroneous. (Continental, No. 38 at p. 2) Continental stated that model counts in DOE's CCMS do not reflect sales or market share, but rather the variety of different models that manufacturers offer. (*Id.*)

For this NOPR, as discussed in previous sections, DOE was able to conduct manufacturer interviews and collect shipments data for several equipment classes. The equipment classes for which data was collected account for 85 percent of total shipments and are marked with an asterisk in table IV.10. For the remainder of the equipment classes for which DOE was not able to collect representative shipments data from manufacturers, DOE utilized the CCMS database to estimate the no-new-standards-case efficiency distribution.

TABLE IV.10—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTIONS IN 2028

Equipment class	Group	Market share by efficiency level							
		EL 0 (%)	EL 1 (%)	EL 2 (%)	EL 3 (%)	EL 4 (%)	EL 5 (%)	EL 6 (%)	EL 7 (%)
VOP.RC.M	1	73	27	0	.....	.....	.....	.....	.....
VOP.RC.L	1	73	27	0	.....	.....	.....	.....	.....
VOP.SC.M*	2	86	5	4	0	0	5	.....	.....
VCT.RC.M	3	93	1	6	0	0	.....	.....	.....
VCT.RC.L	3	93	1	6	0	.....	.....	.....	.....
VCT.SC.H*	4	60	15	17	5	0	0	0	3
VCT.SC.M*	5	48	17	17	1	0	0	17	0
VCT.SC.L*	6	35	5	0	50	0	0	10	0
VCT.SC.I	7	44	19	27	10	0	.....	.....	.....
VCS.SC.H*	8	70	30	0	0	0	0	0	0
VCS.SC.M*	9	71	8	2	11	3	5	.....	.....
VCS.SC.L*	10	77	8	0	1	14	0	0	.....
VCS.SC.I	11	100	0	0	0	0	0	0	.....
SVO.RC.M	12	76	24	0	.....	.....	.....	.....	.....
SVO.SC.M	13	66	2	2	8	8	2	1	10
SOC.RC.M	14	98	1	1	0	0	.....	.....	.....
SOC.SC.M	15	36	7	9	6	15	0	2	25
HZO.RC.M	16	100	0	.....	.....	.....	.....	.....	.....
HZO.RC.L	16	100	0	.....	.....	.....	.....	.....	.....
HZO.SC.M	17	81	4	15	0	0	0	.....	.....
HZO.SC.L	17	81	4	15	0	0	0	.....	.....
HCT.SC.M	18	72	6	0	9	2	0	2	9
HCT.SC.L	18	72	6	0	9	2	0	2	9
HCT.SC.I	18	72	6	0	9	2	0	2	9
HCS.SC.M	19	88	12	0	0	.....	.....	.....	.....
HCS.SC.L	19	88	12	0	0	.....	.....	.....	.....
CB.SC.M*	20	50	40	10	0	0	0	0	.....
CB.SC.L*	21	70	30	0	0	0	0	0	.....

*The distributions for these equipment classes were derived from aggregated data from the Trade Associations Survey, test data, and manufacturer interview data.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the CRE purchased by each sample CRE purchaser in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

While DOE acknowledges that economic factors may play a role when consumers purchase CRE, assignment of CRE efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period, most likely would not fully and

accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions in the commercial sector with respect to energy efficiency are unlikely to be perfectly correlated with energy use. One study in particular showed evidence of substantial gains in energy efficiency that could have been achieved without negative repercussions on profitability, but the investments had not been undertaken by

firms.⁶³ The study found that multiple organizational and institutional factors caused firms to require shorter payback periods and higher returns than the cost of capital for alternative investments of similar risk. A number of other case studies similarly demonstrate the existence of market failures preventing the adoption of energy-efficient technologies in a variety of commercial sectors around the world, including

⁶³ DeCanio, S.J. (1998). "The Efficiency Paradox: Bureaucratic and Organizational Barriers to Profitable Energy-Saving Investments," *Energy Policy*, 26(5), 441–454.

office buildings,⁶⁴ supermarkets,⁶⁵ and the electric motor market.⁶⁶

DOE requests comment on its methodology and data to better inform the no-standards-case efficiency distribution for CRE.

10. 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 equipment, compared to baseline equipment, through energy cost savings. Payback periods that exceed the life of the equipment 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 equipment 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 equipment 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. 6316(e)(1); 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 new and amended standards would be required.

⁶⁴ Prindle 2007, op. cit. Howarth, R.B., Haddad, B.M., and Paton, B. (2000). “The economics of energy efficiency: insights from voluntary participation programs,” *Energy Policy*, 28, 477–486.

⁶⁵ Klemick, H., Kopits, E., Wolverton, A. (2017). “Potential Barriers to Improving Energy Efficiency in Commercial Buildings: The Case of Supermarket Refrigeration,” *Journal of Benefit-Cost Analysis*, 8(1), 115–145.

⁶⁶ de Almeida, E.L.F. (1998), “Energy efficiency and the limits of market forces: The example of the electric motor market in France”, *Energy Policy*, 26(8), 643–653. Xenergy, Inc. (1998), United States Industrial Electric Motor Systems Market Opportunity Assessment (Available at: www.energy.gov/sites/default/files/2014/04/f15/mtrmkt.pdf) (Last accessed Jan. 3, 2023).

G. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.⁶⁷ The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment 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.

The shipments analysis projects units of open and closed refrigeration cases sold in future years in each of food sales, food service, and all other applications combined. These equipment classifications and applications are defined in EIA’s 2018 CBECS. DOE estimates demand for these equipment categories in these applications by calculating demand coming from new construction as well as the replacement of retiring units, for each year.

To calculate new demand for these equipment classes in each application, DOE combined new and existing floorspace projections from *AEO2023* with saturation estimates based on 2018 CBECS and *AEO2023*. Shipments to meet this demand for these CRE equipment categories in each application are then disaggregated across the analyzed CRE classes, using fixed market shares derived from data collected during manufacturer interviews.

To compute demand for replacements, DOE used the lifetime distributions determined in the LCC analysis, which estimates an average lifetime of 10 years for large grocery/multi-line stores (food-sales buildings) and restaurants (food-service buildings), and an average lifetime of 20 years for small food-sales and food-service buildings, with a maximum lifetime of 40 years for all equipment. In each analysis year of the model, DOE calculated retirements across the distribution to compute all demand arising from the retirements.

In response to the June 2022 Preliminary Analysis, AHRI stated that significantly higher-cost equipment

would drive growth of the refurbished equipment market and lead to continued use of older equipment with lower efficiencies and higher GWP refrigerants. (AHRI, No. 46 at p. 15) As discussed in section IV.F.6 of this NOPR, DOE revised its assumptions of lifetime of equipment for small buildings from 15 years at the stage of the preliminary analysis to 20 years in this NOPR. To account for the use of refurbished equipment, DOE assumed an elasticity effect for a fraction of the CRE shipments, which is limited to small-size buildings. DOE applied an elasticity constant of -0.5 to shipments for small-size buildings and scaled this constant down to -0.15 over a period of 20 years (then constant thereafter) from the current year of calculations.

DOE requests comment on the price elasticity assumptions for the CRE shipments analysis as they relate to the overall CRE market and the market for refurbished CRE.

AHRI stated that DOE incorrectly estimated the number of existing units in use, as well as their average lifespan and noted that there are significantly more units in current use than DOE estimated. (*Id.* at p. 7). In response, DOE notes that it collected shipments data during manufacturer interviews and re-estimated the market shares for each equipment class based on the collected data. DOE then used the shipment and stock estimates from the floorspace and saturations calculations and scaled them to the data obtained from the manufacturers for the year 2022. DOE notes that, due to lack of shipments data for some equipment classes with a small market share, DOE estimated their shipments based on other equipment classes with similar characteristics for those equipment classes. For example, in this NOPR, DOE assumed that shipments of VCT.SC.H are one percent of VCT.SC.I and that shipments for HZO.SC.M are equivalent to HZO.SC.L. More information on these assumptions can be found in chapter 9 of the NOPR TSD. DOE also compared its shipments data with the numbers provided by ENERGY STAR in its unit shipment and market penetration report for the calendar year 2021.⁶⁸ DOE’s shipment results are generally consistent with the figures provided by ENERGY STAR,

⁶⁸ ENERGY STAR®, ENERGY STAR® Unit Shipment and Market Penetration Report Calendar Year 2021 Summary. 2021. U.S. Environmental Protection Agency and U.S. Department of Energy. (Last accessed April 11, 2022.) https://energystar.gov/sites/default/files/asset/document/2021%20Unit%20Shipment%20Data%20Summary%20Report_0.pdf.

⁶⁷ 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.

which reported 50-percent market penetration for the reported year.

Historically, the annual amount of CRE capacity shipped has been depicted in linear feet, which is also an alternative way to express shipments data. DOE determined the linear feet shipped for any given year by multiplying each unit shipped by its associated average length and then summing all the linear footage values. Chapter 9 of the NOPR TSD presents the representative equipment-class lengths used for the conversion of per-unit shipments to linear footage within each equipment class.

AHRI commented that changes to market shares would result in corresponding changes to shipping methodologies and added that some of the imposed requirements would cause retailers to favor open cases, or to take doors off completely. (AHRI, No. 46 at pp. 7–8) AHRI added that the impact of pending refrigerant regulations is unknown. (*Id.* at p. 8) AHRI also stated that because door cases have a greater maximum allowable charge compared to cases with doors, customers wishing to use A2L refrigerants may choose to use larger commercial refrigerators without doors. (*Id.* at p. 8) In response to these comments, DOE did not find any significant shift from closed cases to open cases or vice versa. The ratio between closed cases and open cases is approximately 93 percent and 7 percent respectively, as derived from manufacturer provided data for the year 2022. Based on these data, DOE concluded that any shift in the market may already have occurred and

currently DOE does not anticipate any new market trends in this direction.

AHRI shared, in response to DOE's inquiring about market trends in the June 2022 Preliminary Analysis, that architecture in facilities is anticipated to change due to the refrigerant transition. (AHRI, No. 46 at p. 7) AHRI added that these changes are due in part to the lack of available refrigerants and the likely consequent growth in market share in self-contained and smaller units. (*Id.*) AHRI commented that a great deal of uncertainty exists about this direction. (*Id.*) DOE appreciates AHRI's comments and continues to request information on market trends and shipments data to better inform the shipments analysis.

Chapter 9 of the NOPR TSD provides additional details regarding the shipments analysis.

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 and amended standards at specific efficiency levels.⁶⁹ (“Consumer” in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment 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, equipment costs, and NPV of consumer benefits over the lifetime of CRE sold from 2028 through 2057.

DOE evaluates the impacts of new and 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 equipment class in the absence of new and 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 equipment class if DOE adopted new and 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 equipment with efficiencies greater than the standard.

DOE utilized the Python programming language for its shipments' analysis. The final results of the shipments analysis are available in the NIA spreadsheet developed for this analysis, accessible at www.regulations.gov/docket/EERE-2017-BT-STD-0007. 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.11 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2028.
Efficiency Trends	N/A (No efficiency trends were applied).
Annual Energy Consumption per Unit	Expressed as a function of energy use at each TSL.
Total Installed Cost per Unit	Expressed as a function of cost at each TSL.
	Incorporates projection of future equipment prices.
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, weighted-average values from the LCC model.
Energy Price Trends	AEO2023 projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on AEO2023.
Discount Rate	3 percent and 7 percent.
Present Year	2023.

1. Equipment 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.9 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 equipment classes for the first full year of anticipated compliance (2028) with an amended or new standard.

⁶⁹ The NIA accounts for impacts in the 50 States and U.S. territories.

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 (2028). In this scenario, the market shares of equipment 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 equipment above the standard would remain unchanged.

In the absence of data on trends in efficiency, DOE assumed no efficiency trend over the analysis period for both the no-new-standards and standards cases. For a given equipment class, market shares by efficiency level were held fixed to their estimated distribution in 2028.⁷⁰

DOE requests comment on its assumption of no efficiency trend for CRE and seeks historical CRE efficiency data, ideally by equipment class or alternatively by equipment family, or overall for the CRE market as a whole.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered equipment between each potential standards case and the case with no new and amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each equipment (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 *AEO2023*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on “Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards” appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses

included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 document, 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 sector⁷¹ that EIA uses to prepare its AEO. The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each equipment shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed price trends for CRE with variable speed compressors and CRE with LED lighting. DOE applied the same trends to project component prices for each representative unit of each equipment class containing variable speed compressors and/or LED lighting. By 2057, which is the end date of the projection period, the average CRE LED lighting price is expected to drop by approximately 25 percent, while the average price of variable speed compressors is expected to drop by approximately 42 percent, relative to projected 2028 prices. Because these component prices do not typically contribute substantively to the overall price of equipment, overall equipment prices are projected to decrease by at

most 7 percent by 2057 relative to 2028. The price of equipment at the current baseline efficiency level is expected to drop by at most 3 percent in the same period. For details on the price learning methodology and assumptions, see chapter 8 of the NOPR TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average commercial energy price changes in the Reference case from *AEO2023*, which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. To estimate repair and maintenance costs, DOE considered the typical failure rate of refrigeration system components, component MPCs and associated markups, and the labor cost of repairs. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2023* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends and stock compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the NOPR TSD.

Use of higher-efficiency equipment is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the equipment due to the increase in efficiency. DOE did not find any data on the rebound effect specific to CRE that would indicate that end-users or CRE purchasers would alter the utilization of their equipment as a result of an increase in efficiency. CRE are typically plugged in and operate continuously; therefore, DOE assumed a rebound rate of 0.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (“OMB”) to Federal agencies on the development of regulatory analysis.⁷² The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to

⁷⁰ DOE notes that, as discussed in section IV.C.1.a.i of this document, DOE has accounted for CRE efficiency trends by assuming that all self-contained units will have transitioned to R–290 (propane) by 2028.

⁷¹ 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 March 9, 2023).

⁷² United States Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. Section E. Available at georgewbush-whitehouse.archives.gov/omb/memoranda/m03-21.html (last accessed February 17, 2023).

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 and 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.

In response to the June 2022 Preliminary Analysis, AHRI commented that the cost per energy efficiency improvement will be very high and especially challenging for small business owners, and in particular for restaurants and small retailers located in rural and urban food deserts, in which profit margins are low. (AHRI, No. 46 at p. 8)

For this NOPR, DOE analyzed the impacts of the considered standard levels on small businesses. For this subgroup, DOE applied discount rates specific to small businesses to the same consumer sample that was used in the standard LCC analysis. DOE used the LCC and PBP model to estimate the impacts of the considered efficiency levels on this subgroup. For details on the subgroup analysis, see chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new and amended energy conservation standards on manufacturers of CRE and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development ("R&D") and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new and 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 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, equipment shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant equipment. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (*i.e.*, TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the CRE manufacturing industry based on the market and technology assessment and publicly available information. This included a top-down analysis of CRE manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.*, revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses ("SG&A"); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the CRE manufacturing industry, including company filings of form 10-

K from the SEC,⁷³ corporate annual reports, the U.S. Census Bureau's ASM,⁷⁴ the U.S. Census Bureau's *Economic Census*,⁷⁵ the U.S. Census Bureau's *Quarterly Survey of Plant Capacity Utilization*,⁷⁶ and reports from Dun & Bradstreet.⁷⁷

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new and amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of CRE in order to develop other key GRIM inputs, including equipment and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers

⁷³ U.S. Securities and Exchange Commission. *Electronic Data Gathering, Analysis, and Retrieval system*. Available at www.sec.gov/edgar/searchedgar/companysearch (last accessed April 20, 2022).

⁷⁴ U.S. Census Bureau. *Annual Survey of Manufactures*. (2013–2022). Available at www.census.gov/programs-surveys/asm.html (last accessed February 1, 2023).

⁷⁵ U.S. Census Bureau. *Economic Census*. (2012 and 2017). Available at www.census.gov/programs-surveys/economic-census.html (last accessed February 1, 2023).

⁷⁶ U.S. Census Bureau. *Quarterly Survey of Plant Capacity Utilization*. (2010–2022). Available at www.census.gov/programs-surveys/qpc/data/tables.html (Last accessed December 14, 2022).

⁷⁷ Dun & Bradstreet Hoovers. Subscription login accessible at app.dnbhoovers.com/ (last accessed March 27, 2023).

during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by new and amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, “Review under the Regulatory Flexibility Act,” and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new or amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base year of the analysis) and continuing to 2057. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of CRE, DOE used a real discount rate of 10.0 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, results of the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the

GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered equipment can affect the revenues, gross margins, and cash flow of the industry. For this NOPR, DOE relied on a design-option approach, supported with the testing and reverse engineering of directly analyzed CRE. The design options were incrementally added to the baseline configuration and continued through the “max-tech” configuration (*i.e.*, implementing the “best available” combination of available design options). For a complete description of the MPCs, see section IV.C of this document and chapter 5 of the NOPR TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA’s annual shipment projections derived from the shipments analysis from 2023 (the base year) to 2057 (the end year of the analysis period). See section IV.J.2.b of this document and chapter 9 of the NOPR TSD for additional details.

c. Product and Capital Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment 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 equipment designs comply with new or 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 equipment designs can be fabricated and assembled.

DOE based its estimates of the product conversion costs that would be required to meet each efficiency level on information obtained from manufacturer interviews; the design pathways analyzed in the engineering analysis; the equipment teardown analysis; the shipments analysis; and model count information. DOE estimated product development effort, including engineer, laboratory technician, and marketing resources, associated with design options and scaled the costs based on the number of basic models (or product platforms, depending on the nature of the design option). Product development effort varied by design option. DOE modeled door design changes (*i.e.*, moving from a double-pane to triple-pane door, incorporating vacuum-insulated glass) would require more complex system redesigns and more cost, as compared to implementing more efficient components (*e.g.*, incorporating a PSC motor or an ECM). DOE also assumed additional engineering effort would be required to optimize variable-speed compressors to ensure energy efficiency benefits, based on interview feedback.

To estimate industry product conversion costs, DOE multiplied the product development cost estimate at each efficiency level for each equipment class by the number of industry basic models or product platforms that would require redesign. DOE used its CCD⁷⁸ and California Energy Commission’s MAEDbS⁷⁹ to identify CRE models covered by this proposed rulemaking. To identify chef bases and high-temperature CRE models, DOE further relied on publicly available data aggregated from web scraping retail websites. DOE used the no-new-standards case efficiency distribution from the shipments analysis to estimate the model efficiency distribution. DOE also included the estimated cost of testing to the DOE test procedure for chef bases and high-temperature units using the estimated per-unit testing cost of \$5,000 detailed in the September 2023 Test Procedure Final Rule. 88 FR 66152, 66215.

In addition to the sources used to derive product conversion costs, DOE relied on additional sources of information such as the Trade

⁷⁸ U.S. Department of Energy’s Compliance Certification Database is available at www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A* (last accessed February 21, 2023).

⁷⁹ California Energy Commission’s Modernized Appliance Efficiency Database System is available at cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx (last accessed February 21, 2023).

Associations Survey⁸⁰ to estimate the capital conversion costs manufacturers would incur to comply with potential new and amended energy conservation standards. During interviews, manufacturers provided estimates and descriptions of the required tooling changes required by the considered design options. (See Trade Associations Survey, No. 50 at pp. 16–18) Based on these inputs, DOE assumed that most component swaps, while requiring moderate product conversion costs, would not require changes to existing production lines or equipment, and, therefore, would not require notable capital expenditures because one-for-one component swaps would not require changes to existing production equipment (*i.e.*, manufacturers will continue to be able to use their existing production equipment and production lines to manufacture CREs that achieve higher efficiency levels through component swaps, which are typically associated with lower ELs). However, based on manufacturer feedback, DOE modeled some tooling and capital expenditures when manufacturers implement improved door designs and variable-speed compressors. For improved door designs, some manufacturers noted that they would need new fixtures. Incorporating additional panes of glass for high-volume equipment classes could also necessitate heavier duty lifting equipment to transport and assemble heavier glass packs. For variable-speed compressors, which could be larger than existing single-speed compressors, manufacturers may need new tools for the baseplate. To estimate industry capital conversion costs, DOE scaled the estimated capital expenditures at each efficiency level for each equipment class by the number of applicable OEMs.

As previously stated, the Trade Associations Survey included information about the anticipated capital investments associated with a range of design options. (*Id.* at pp. 16–18) The survey results showed high capital investments associated with increasing insulation thickness and incorporating vacuum-insulated panels. (*Id.* at p. 18) As discussed in section IV.B.1 of this document, DOE excluded these technologies from further consideration in the engineering analysis. Other design options potentially requiring notable capital investment included microchannel heat exchangers, additional panes of glass, and variable-speed compressors. DOE compared the feedback from the Trade

Associations Survey with information from the equipment teardown analysis and manufacturer interviews and incorporated the feedback where applicable.

DOE requests detailed comment and information on the capital investments associated with each analyzed design option. In particular, DOE requests detailed comment and feedback on the specific changes in equipment and tooling required to incorporate microchannel heat exchangers, as DOE currently models microchannel heat exchangers as a purchased part that can be substituted for tube and fin heat exchangers with minor production line changes.

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 new standard. The conversion cost figures used in the GRIM can be found in section IV.J.2.c of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

Regarding the potential investments associated with redesigning CRE to use flammable refrigerants in response to refrigerant regulations such as the December 2022 EPA NOPR, DOE did not consider these investments as conversion costs as they are independent of DOE actions related to any new or amended energy conservation standards. Instead, the refrigerant transition expenses are modeled as an impact to industry cashflow and are incorporated into both the no-new-standards case and standards cases. The refrigerant transition expenses includes redesigning CRE to use flammable refrigerants and retrofitting production facilities to accommodate flammable refrigerants. DOE relied on manufacturer feedback in confidential interviews, a report prepared for EPA,⁸¹ results of the engineering analysis, and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis to estimate the industry refrigerant transition costs. Based on feedback, DOE assumed that the transition to low-GWP refrigerants would require industry to invest approximately \$21.3 million in R&D and \$33.3 million in capital expenditures (*e.g.*, investments in new charging equipment, leak

detection systems, *etc.*). These costs are included in the no-new-standards case as well as the standards cases. See section V.B.2.e of this document or chapter 12 of the NOPR TSD for additional information.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.*, labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new and amended energy conservation standards: (1) a preservation of gross-margin-percentage scenario; and (2) a preservation-of-operating-profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation-of-gross-margin-percentage scenario, DOE applied a single uniform “gross-margin-percentage” markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within an equipment class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE assumed a gross-margin percentage of 29 percent for all equipment classes.⁸² Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross-margin percentage as their production costs increase, particularly for minimally efficient equipment. Therefore, this scenario represents an upper bound of industry profitability under a new and amended energy conservation standard.

In the preservation-of-operating-profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains no-new-standards-case operating profit. DOE implemented

⁸⁰ www.regulations.gov/document/EERE-2017-BT-STD-0007-0050.

⁸¹ See pp. 5–113 of the “Global Non-CO₂ Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation” (2019). Available at www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.

⁸² The gross margin percentage of 29 percent is based on a manufacturer markup of 1.40.

this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the expected compliance date of the new and amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

DOE seeks comment on the use of a 1.40 manufacturer markup for all CRE equipment classes analyzed in this proposed rule. DOE also seeks comment on the estimated manufacturer markups and incremental MSPs that result from the analyzed energy conservation standards.

A comparison of industry financial impacts under the two manufacturer markup scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 60 percent of the domestic CRE shipments. Participants included domestic-based and foreign-based OEMs. Participants included manufacturers with a wide range of market shares and variety of equipment offerings, including four manufacturers who offered equipment under the expanded scope.

In interviews, DOE asked manufacturers to describe their major concerns regarding the potential for more stringent energy conservation standards for CRE. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under NDAs, so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

a. Changes to the Cabinet Structure

In interviews, manufacturers expressed numerous concerns about efficiency levels that would necessitate significant changes to the cabinet structure (*i.e.*, increasing insulation thickness or implementing VIPs). Regarding thicker insulation, manufacturers noted that changing the exterior dimensions of equipment would be extremely undesirable for the replacement market because customers expect equipment to fit within the same footprint as the equipment being replaced. A change in exterior dimensions could cause misalignment

between existing cases and new cases. As manufacturers typically treat exterior dimensions as fixed, increasing insulation thickness would necessitate reducing interior volume, which could reduce useable, refrigerated volume. Furthermore, manufacturers stated that increasing insulation thickness would require significant capital and product conversion costs. Manufacturers would need to invest in new foam fixtures and tooling. Manufacturers would likely need to update all designs and tooling associated with the interior of the equipment.

Regarding VIPs, manufacturers noted there is very limited industry experience with incorporating VIPs into CRE. Manufacturers emphasized that commercial environments may not be suitable for VIPs as they could be easily punctured, which would erode any efficiency improvements. Manufacturers noted that it would be nearly impossible to do in-field replacements of ineffectual VIPs, meaning that a puncture could require an entirely new CRE unit. Manufacturers also noted that implementing VIPs would require significant investment and redesign to the foaming station, manufacturing facility, and equipment design. Typically, CRE designs require numerous fasteners to secure internal components to the cabinet, which would not be feasible with VIPs. Manufacturers also noted the need to allocate special warehouse space to ensure the VIPs are not jostled or roughly handled in the manufacturing environment.

b. Supply Chain Concerns

Multiple manufacturers expressed concerns about the ongoing supply chain constraints related to sourcing a range of components, such as high-efficiency motors, compressors, and control boards and electronics. Manufacturers noted that limited component availability, increases in raw material prices, and escalating shipping and transportation costs all affect manufacturer production costs. In addition to higher production costs, these manufacturers stated that the evolving nature of these component shortages requires dedicating personnel resources to identify and qualify new suppliers, build prototypes, conduct testing, and update equipment literature. Some manufacturers expressed concern about standard levels that would necessitate numerous component changes, as the manufacturers are already experiencing delays sourcing parts for prototypes. If these supply constraints continue through the end of the conversion

period, industry could face capacity constraints. DOE discusses potential supply constraints in section V.B.2.c of this document.

4. Discussion of MIA Comments

In response to the June 2022 Preliminary Analysis, NAMA asserted that the convenience services industry had suffered greatly over the past 3 years due to new DOE energy efficiency regulations, new ENERGY STAR levels, regulations on refrigerants (*e.g.*, California Air Resources Board), the global pandemic, record inflation, and staffing troubles. (NAMA, No. 37 at pp. 2–3) NAMA commented that DOE assumed during the previous rulemaking that the industry would be using natural refrigerants, but industry had not completed these transitions due in part to pandemic shutdowns and the cost of redesigning and manufacturing. (*Id.* at p. 3)

Furthermore, NAMA commented that the costs associated with setting up the production of R-290 machines can easily cost between \$0.5 million and \$1.0 million per production line depending on the scale and stated that the June 2022 Preliminary TSD does not capture these costs. (*Id.* at pp. 7–8) NAMA commented further that the cost of redesigning equipment for lower GWP chemicals and the associated costs for safety compliance, improvements to factories, changes to service, and training of factory employees and service providers proved a huge burden to smaller manufacturers. (*Id.* at p. 3) NAMA stated that several of its member manufacturing companies qualified as small- and medium-enterprise businesses and requested that DOE pay close attention to the economic impacts of a new set of energy regulations on an industry already under extreme pressure. (*Id.*) NAMA recommended that the environmental impact analysis include the fact that the CRE industry has spent many millions of dollars converting to lower-GWP refrigerant blends and hydrocarbon refrigerants such as R-290, which have a direct and immediate impact on climate change. (*Id.* at p. 8)

AHRI commented similarly on the costs and burdens to transition to alternative refrigerants. (AHRI, No. 46 at pp. 12–13, 17–18) AHRI commented that the AIM Act requires refrigerant manufacturers to phase down the supply of high-GWP HFCs, encouraging CRE manufacturers to switch to low-GWP refrigerants, which often have some degree of flammability. (*Id.* at p. 18) AHRI commented that new low-GWP refrigerants would significantly impact CRE and that new safety

standards must address the application of these new flammable refrigerants and subsequent leak mitigation. (*Id.*) AHRI commented that flammable refrigerant sensors would likely be employed, with significant redesign of equipment needed to achieve required mitigation capability, and all equipment would require certification to these new standards, which included a number of additional requirements due to the combination of multiple standards. (*Id.*) AHRI added that all equipment would also need to eliminate potential ignition sources. (*Id.*) AHRI stated that manufacturers estimate the capital investment needed to safely handle and store flammable refrigerants at manufacturing facilities at \$0.5 to \$1.0 million for small facilities that only manufacture self-contained equipment and \$2.0 to \$4.0 million for medium and larger facilities. (*Id.* at pp. 12–13) AHRI noted that some companies have made this investment and transitioned products with smaller charges (114 grams in areas of egress, such as hallways) and 150 grams limit in occupied spaces for A3 products (such as propane). (*Id.* at p. 13)

Regarding the comments about new DOE energy efficiency regulations, DOE's cumulative regulatory burden analysis is based on rulemakings that go into effect within a 3-year time frame before or after the expected compliance date of amended CRE energy conservation standards (2028). Section V.B.2.e of this document includes a list of DOE energy conservation standards rulemakings that contribute to cumulative regulatory burden within the 3-year period before or after the expected compliance date of new and amended CRE energy conservation standards, should they be finalized.

Regarding the comments about EPA's new ENERGY STAR levels, DOE notes that participating in ENERGY STAR is voluntary and not considered in DOE's analysis of cumulative regulatory burden.

Regarding the comments about the costs associated with redesigning equipment to make use of lower-GWP refrigerants, DOE understands that manufacturers of CRE using high-GWP refrigerants (*e.g.*, R-404a) will likely need to transition to alternative, lower-GWP refrigerants to comply with anticipated refrigeration regulations, such as the December 2022 EPA NOPR, prior to the expected 2028 compliance date of potential energy conservation standards. See 87 FR 76738. DOE did incorporate the estimated expenses associated with redesigning CRE to make use of flammable refrigerants and upgrading production facilities to

accommodate flammable refrigerants in the GRIM. DOE relied on a range of sources to estimate the investment required to transition CRE using high-GWP refrigerants to low-GWP refrigerants that satisfy the restrictions outlined in the December 2022 EPA NOPR. These sources included feedback from confidential manufacturer interviews, a report prepared for EPA,⁸³ results of the engineering analysis, and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis. DOE also reviewed other public sources, such as retail websites, EPA's ENERGY STAR Product Finder dataset, and equipment literature to estimate the portion of the CRE market that still needs to transition to low-GWP refrigerants (*e.g.*, R-290). The expenses associated with a change in refrigerant are independent on DOE's proposal to amend energy conservation standards and are separate from DOE's estimates of conversion costs to meet amended standards. See section V.B.2.e of this document and chapter 12 of the NOPR TSD for additional discussion on cumulative regulatory burden.

NAMA commented that DOE should not discount the time and resources needed to evaluate and respond to simultaneous proposed test procedures and energy conservation standards for multiple equipment over a short period of time. (NAMA, No. 37 at p. 17) NAMA stated that when rulemakings occur simultaneously, the cumulative burden increases dramatically. (*Id.*) NAMA noted that manufacturers of CRE are in the middle of transitioning from HFC refrigerants to lower-GWP refrigerants and commented that additional requirements from DOE would increase the time necessary for transition. (*Id.*) NAMA commented that the transition to lower-GWP refrigerants is more impactful to the environment than the new energy efficiency requirements shown in the June 2022 Preliminary Analysis. (*Id.*) NAMA requested that DOE incorporate the financial results of the current cumulative regulatory burden analysis directly into the MIA by adding the combined costs of complying with multiple regulations into the product conversion costs in the GRIM. (*Id.* at p. 18) NAMA requested that DOE complete a consolidated analysis for multiple regulations starting from the time of the first regulation. (*Id.*) NAMA stated that DOE has asserted such an analysis would require counting the

costs/investments and the revenues/profits for both equipment, which is correct and represents a feature, not a deficiency. (*Id.*) NAMA further commented that if this is not possible, DOE should incorporate a value reduction factor in the first post-regulation year of the analysis that subtracts the value lost from the remaining years of the previous regulation. (*Id.*)

Regarding NAMA's suggestion to account for the financial results of the cumulative regulatory burden analysis into the GRIM, DOE incorporated the estimated refrigerant transition costs that occur in the timeframe of the analysis directly into the GRIM in both the no-new-standards case and the standards-case to reflect the impact of refrigerant regulation on CRE industry cash flow. See section V.B.2.e of this document for additional information.

NAMA requested also that DOE stage its energy efficiency regulations at least 3, and preferably 5, years away from other significant and overlapping governmental regulations. (*Id.*) NAMA commented that changes to State and local building codes are another regulatory burden that should have been factored in the June 2022 Preliminary Analysis.

Regarding NAMA's suggestion to promulgate energy efficiency regulations at least 3, and preferably 5, years away from other significant and overlapping governmental regulations, DOE has statutory requirements under EPCA on the timing of rulemakings. For CRE, EPCA requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered equipment and publish either a notification of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(e)(1)); 42 U.S.C. 6295(m)(1)) The current CRE energy conservation standards were implemented by the March 2014 Final Rule. 79 FR 17725. Under EPCA, any potential new and amended standards would go into effect (1) 3 years after the date on which the final amended standard is published or (2) if the Secretary determines, by rule, that 3 years is inadequate, not later than 5 years after the date on which the final rule is published. (42 U.S.C. 6313(c)(6)(C)). For this NOPR, DOE has proposed a 3-year compliance period after the date on which final amended standard is published. DOE welcomes stakeholder feedback on choice of 3

⁸³ See pp. 5–113 of the “Global Non-CO₂ Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation” (2019). Available at www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.

years or 5 years between the final rule publication and the compliance date.

NAMA commented that large inaccuracies exist in the tables of design options in the June 2022 TSD and that the June 2022 Preliminary TSD failed to take into account the substantial capital costs caused by these design options, not including recent cost increases due to inflation. (NAMA, No. 37 at pp. 9–10) NAMA stated that it sees no sign DOE has factored into its estimates the cost of capital-intensive design options, such as increased insulation, vacuum panels, heavier doors, and microchannel coils, and that these costs, which would be accrued on top of the millions of dollars being invested to move from high-GWP refrigerants to low-GWP refrigerants, comprise an issue of cumulative burden. (*Id.*)

With respect to NAMA's comment on design options and capital costs, DOE did not estimate capital conversion costs for the June 2022 Preliminary Analysis as DOE does not conduct a full MIA for rulemaking stages prior to the NOPR analysis stage. For this NOPR, DOE accounts for the capital investments required to implement the considered design options in the MIA. See section IV.J.2.c of this document for additional details on conversion costs.

AHRI commented that its members face significant regulatory burdens requiring redesign, retooling, testing, and listing of equipment; new regulations related to the inclusion of special/definite-purpose motors as regulated; state-mandated refrigerant emissions limits, which coincide with a change in the safety standard for CRE; and new regulations requiring elimination of the use of phenyl isopropylated phosphate (PIP 3:1) in components. (AHRI, No. 46 at p. 16) AHRI commented that recent changes to the scope of test procedures for electric motors will increase the burden on manufacturers significantly if all equipment using special and definite-purpose motors were suddenly forced to certify compliance with standards for component parts, including the testing, paperwork, and recordkeeping requirements that accompany certification. (*Id.* at pp. 16–17) AHRI stated that efficient electric motors incorporated into finished equipment are already a major part of the energy equation when OEMs consider what design options to apply to meet new standards, as is evidenced by the June 2022 Preliminary TSD, and urged DOE to account for these costs. (*Id.* at p. 17) AHRI recommended that DOE should consider the impact of new motor designs on CRE and stated that, for equipment yet to be produced, the

impact could range from retesting/recertification aligning with safety standards to a full equipment redesign accommodating a new, larger motor. (*Id.*) AHRI commented that the impact could be devastating for equipment already installed in businesses as motors could no longer be available as replacement parts, thereby forcing consumers to prematurely discard equipment that could have otherwise been repaired, imposing significant additional costs on consumers, and generating environmental impacts that would likely entirely offset any marginal gains from the increased scope. (*Id.*) AHRI recommended that DOE should account for the decrease in useful life from this component regulation in the product's LCC calculations. (*Id.*) AHRI stated that the 180-day timeline for motor manufacturers to comply with the electric motor test procedure puts the need to consider the impact of motor test procedures into this analysis. (*Id.*) AHRI calculated and submitted a detailed cost analysis of changing an embedded motor totaling \$304,000 for one model of commercial HVAC equipment in response to the electric motor rulemaking. (*Id.*) AHRI stated that CRE will likely face similar costs and that the expanded definition of "manufacturer" would redefine OEMs as electric motor manufacturers and they would need to comply with these certification requirements, which is a burden that DOE has not accounted for this burden in its analysis. (*Id.*)

DOE analyzes cumulative regulatory burden pursuant to section 13(g) of the Process Rule. Regarding comments related to the electric motors test procedure final rule published on October 19, 2022 ("October 2022 Final Rule"), DOE tentatively expects that the motors used in the CRE covered by this rulemaking would not be directly impacted by the electric motors rulemaking because the motors used in CRE are typically below 0.25 horsepower, and, thus, are outside the scope of the October 2022 Final Rule. See 87 FR 63588, 63601. Regarding comments related to a change in safety standards for CRE, DOE understands that existing safety standards will be replaced by UL 60335–2–89 in 2024 after which all new equipment and certain modifications to existing CRE will require evaluation to the latest edition of UL 60335–2–89. Some manufacturers noted that the latest edition of UL 60335–2–89 is more onerous than existing safety standards for CRE. DOE understood that the product conversion cost feedback from

manufacturer interviews reflects the additional time investment associated with testing to UL 60335–2–89.

Regarding comments related to regulations requiring elimination of the use of PIP 3:1 in components, DOE did not consider chemical regulations in its NOPR cumulative regulatory burden analysis as EPA's final rule is not a CRE-specific Federal regulatory action and the required compliance date does not occur within the specified 3-year cumulative regulatory burden timeframe analyzed in this NOPR. See 87 FR 12875.

AHRI commented that manufacturers of chef bases, griddle stands, and other equipment for which there is no test procedure would have to spend additional time and funds to determine test efficacy and whether it is possible to meet DOE-designated energy conservation standards. (AHRI, No. 46 at p. 8)

DOE is proposing new and amended conservation standards for chef bases and high-temperature units (*e.g.*, VCT.SC.H, VCS.SC.H, CB.SC.M, CB.SC.L). In its modeling, DOE incorporated the upfront per-unit costs associated with testing to the September 2023 Test Procedure Final Rule for the classes of equipment for which there was no test procedure. DOE incorporated the testing costs into its product conversion cost estimates. See section IV.J.2.c of this document and chapter 12 of the NOPR TSD for additional details.

NAMA commented that the CRE industry has suffered shortages in the supply chain of critical parts during recent years. (NAMA, No. 37 at p. 14) Specifically, NAMA commented regarding difficulties in acquiring fabricated computer chips and other components in the electronics, displays, and electrical area. (*Id.*) NAMA stated that the economic analysis in support of the June 2022 Preliminary Analysis did not account for these disruptions. (*Id.*) NAMA recommended that DOE consider the impact of supply chain issues as part of the new energy efficiency standards levels. (*Id.*) NAMA commented that unavailable components had increased the complexity of equipment design, and further changes based on perceived energy efficiency added additional complexity without benefiting the customer. (*Id.*)

As detailed in section IV.J.3 of this document, DOE received similar comments about the challenges sourcing certain CRE components in recent years during confidential manufacturer interviews. DOE notes that increased costs associated with recent supply

chain issues have been implemented in the cost analysis and are presented in the MPCs in this NOPR analysis, specifically by way of 5-year moving averages for materials and the most up-to-date information on purchased part prices for this NOPR analysis.

DOE requests comment on the availability of computer chips and other electronic components used in CREs in the timeframe of 2028, and specifically how availability would affect industry's ability to achieve higher efficiency levels.

NAFEM commented that DOE was evasive in DOE's response to comments regarding negative impacts on a substantial number of small businesses in the July 2021 RFI. (NAFEM, No. 40 at p. 4) NAFEM commented that it continues to work with the Small Business Administration ("SBA") Office of Advocacy to ensure that small businesses have a direct avenue for input and that DOE properly assesses cumulative regulatory burden and conducts a fair regulatory flexibility analysis. (*Id.*)

DOE notes that there is no regulatory flexibility analysis or manufacturer impact analysis in the preliminary analysis stage of rulemakings. At this NOPR stage, DOE identified 25 small domestic OEMs selling covered CRE in the United States. In support of this NOPR analysis, DOE contractors conducted confidential manufacturer interviews, which included discussions with small, domestic OEMs. DOE incorporated their feedback into the MIA. Additionally, DOE analyzed the impact of the proposed amended standards on small business manufacturers in section VI.B of this document and in chapter 12 of the NOPR TSD.

NAMA commented that no contact between DOE consultants and its manufacturing members was apparent and stated its belief that the information in the June 2022 Preliminary TSD would have been more accurate and reflective of today's market if NAMA's members had been interviewed. (NAMA, No. 37 at p. 6)

DOE did not conduct preliminary manufacturer interviews in support of the June 2022 Preliminary Analysis. However, DOE conducted interviews with a range of manufacturers in support of this NOPR analysis. DOE conducted manufacturer interviews with eight CRE OEMs, representing approximately 60 percent of domestic industry shipments. For additional information on manufacturer interviews, see section IV.J.3 of this document and chapter 12 of the NOPR TSD.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO₂, NO_x, SO₂, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH₄ and N₂O, as well as the reductions to emissions of other gases due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO₂, NO_x, SO₂, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO*, including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this document uses projections from *AEO2023*. Power sector emissions of CH₄ and N₂O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.⁸⁴

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and "fugitive" emissions (direct leakage to the atmosphere) of CH₄ and CO₂, are estimated based on the methodology described in chapter 15 of the NOPR TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO*, which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2023* reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the emissions control programs discussed in

the following paragraphs the emissions control programs discussed in the following paragraphs, and the Inflation Reduction Act.⁸⁵

SO₂ emissions from affected electric generating units ("EGUs") are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO₂ for affected EGUs in the 48 contiguous States and the District of Columbia (D.C.). (42 U.S.C. 7651 *et seq.*) SO₂ emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule ("CSAPR"). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO₂ emissions, and went into effect as of January 1, 2015.⁸⁶ The *AEO* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO₂ emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO₂ emissions by another regulated EGU.

However, beginning in 2016, SO₂ emissions began to fall as a result of the Mercury and Air Toxics Standards ("MATS") for power plants.⁸⁷ 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants ("HAP"), and also established a standard for SO₂ (a non-HAP acid gas)

⁸⁵ For further information, see the Assumptions to *AEO2023* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at www.eia.gov/outlooks/aeo/assumptions/ (last accessed March 30, 2023).

⁸⁶ CSAPR requires States to address annual emissions of SO₂ and NO_x, precursors to the formation of fine particulate matter (PM_{2.5}) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards ("NAAQS"). CSAPR also requires certain States to address the ozone season (May–September) emissions of NO_x, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five States in the CSAPR ozone season program; 76 FR 80760 (December 27, 2011) (Supplemental Rule).

⁸⁷ In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO₂ emissions.

⁸⁴ Available at www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf (last accessed March 9, 2023).

as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO₂ emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO₂ emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO₂ emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO₂ emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO₂ emissions. DOE estimated SO₂ emissions reduction using emissions factors based on *AEO2023*.

CSAPR also established limits on NO_x emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on NO_x emissions in those States covered by CSAPR emissions limits if excess NO_x emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_x emissions from other EGUs. In such 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 reduce NO_x emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_x emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_x emissions in the States not covered by CSAPR. DOE used *AEO2023* data to derive NO_x emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2023*, which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO₂, CH₄, N₂O, NO_x, and SO₂ that are expected to result from each of the TSLs considered. 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 equipment shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG ("February 2021 SC-GHG TSD").

In response to the June 2022 Preliminary Analysis, AHRI expressed concern that DOE's social cost of carbon ("SCC") analysis used to generate the original 2007 and updated 2020 new interim value for the social cost of carbon dioxide extends beyond the statutory authority and the scope contemplated by Congress. (AHRI, No. 46 at p. 9) AHRI stated its belief that DOE should withdraw the SCC values and refrain from using the SCC in any other rulemaking or policymaking until the SCC undergoes a more rigorous notice, review and comment process. (*Id.*) AHRI added that while AHRI agrees that the SCC should be estimated, presented, and made publicly available for every DOE rule, the SCC has not been adequately reviewed before being used as a factor in calculating net benefits. (*Id.*)

As stated in section III.F.1.f of this document, DOE accounts for the environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, and considers them important to take into account when considering the need for national energy conservation. (See 42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) In addition, Executive Order 13563 states 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)." 76 FR 3821 (Jan. 21, 2011) For these reasons, DOE includes monetized emissions reductions in its evaluation of potential standard levels and reporting of net benefits. As previously stated, however, DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases.

AHRI stated that the SCC's time-period for analysis renders its applicability suspect. (AHRI, No. 46 at p. 9) AHRI noted that, in contrast to the timeframe considered for carbon emissions, DOE calculates the present value of the costs to consumers and manufacturers over a 30-year period. (*Id.*) AHRI contends that DOE's comparison of 30 years of cost to hundreds of years of presumed future benefits is inconsistent and improper. (*Id.*)

In response, DOE notes that its analysis considers the costs and benefits associated with 30 years of shipments of a covered product. Because such products continue to operate beyond 30 years, DOE accounts for energy cost savings and reductions in emissions until all products shipped within the 30-year period are retired. In the case of CO₂ emissions, which remain in the atmosphere and contribute to climate change for many decades, the benefits of reductions in emissions likewise occur over a lengthy period. To not include such benefits would be inappropriate. However, because benefits associated with a ton of CO₂ emissions are discounted to derive the SCC value for a given emissions year, and then the benefits from potential standards are discounted to the present, the contribution of climate change benefits in the far future to the total benefits from CO₂ reduction is very small.

AHRI stated that EPA's focus is exclusively on benefits accruing within this nation, and thus SCC figures reported by DOE at the global level are beyond the scope and authority of DOE. (*Id.* at p. 10) As previously discussed in this section, many climate impacts that affect the welfare of U.S. citizens and residents are better reflected by global measures of the SC-GHG. 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.

AHRI stated that DOE wrongly assumes that SCC values will increase over time. (*Id.*) AHRI contended that the

more economic development that occurs, the more adaptation and mitigation efforts are both undertaken by humanity and that a population living in a growing economy can afford to undertake. (*Id.*) In response, DOE notes that there are many reasons why the analysis of the IWG, along with other rigorous assessments, shows SCC values rising over time. Briefly, as concentrations of GHGs increase, so do the impacts on climate and sea level. Growing population in many parts of the world mean more people who would suffer the effects of heat waves and rising sea levels, and continued economic growth means that the overall magnitude of economic damage from climate change is likely to rise. In its February 2021 TSD, the IWG notes that various limitations in the analysis suggest that the range of SC-GHG estimates presented in the TSD likely underestimate societal damages from GHG emissions.⁸⁸

AHRI commented that if DOE still chooses to include the SCC, DOE should consider the benefits of foam blowing and the refrigerant transition in its analysis. (*Id.* at p. 9) In response, DOE notes that the benefits of foam blowing agents and the refrigerant transition is independent of DOE actions related to any new and amended energy conservation standards, therefore such benefits are not accounted for in its monetizing emissions analysis.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO₂, CH₄, and N₂O by using a measure of the SC of each pollutant (*e.g.*, “SC-CO₂”). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That

is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the IWG or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO₂, CH₄, and N₂O emission reductions using SC-GHG values that were based on the interim values presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, published in February 2021 by the IWG (“February 2021 SC-GHG TSD”). The SC-GHG is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, the SC-GHG includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. Therefore, the SC-GHG reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC-GHG is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO₂, N₂O, and CH₄ emissions. As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees that the interim SC-GHG estimates represent the most appropriate estimate of the SC-GHG until revised estimates have been developed reflecting the latest peer-reviewed science.

The SC-GHG 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 SC-CO₂ values used across agencies. The IWG published SC-CO₂ estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (“IAMs”) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO₂ emissions growth, as well as

equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO₂ concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the social cost of methane (“SC-CH₄”) and nitrous oxide (“SC-N₂O”) using methodologies consistent with the methodology underlying the SC-CO₂ estimates. The modeling approach that extends the IWG SC-CO₂ methodology to non-CO₂ GHGs has undergone multiple stages of peer review. The SC-CH₄ and SC-N₂O estimates were developed by Marten *et al.*⁸⁹ and underwent a standard double-blind peer-review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC-CO₂ estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC-CO₂ estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide*,⁹⁰ and recommended specific criteria for future updates to the SC-CO₂ estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process.⁹⁰ Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC-CO₂ estimates used in regulatory analyses are consistent with the guidance contained in OMB’s Circular A-4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC-GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were

⁸⁹ Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH₄ and N₂O mitigation benefits consistent with the U.S. Government’s SC-CO₂ estimates. *Climate Policy*. 2015. 15(2): pp. 272–298.

⁹⁰ 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. nap.nationalacademies.org/catalog/24651/valuing-climate-damages-updating-estimation-of-the-social-cost-of.

⁸⁸ See the February 2021 SC-GHG TSD at p. 4. Available at www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocumentSocialCostofCarbonMethaneNitrousOxide.pdf.

calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government’s estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations in the National Academies 2017 report. The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates that takes into consideration the advice in the National Academies 2017 report and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG’s initial review conducted under E.O. 13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, tourism, and spillover pathways, such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the

United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the United States and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule, DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 SC–GHG TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the United States because they do not fully capture the regional interactions and spillovers discussed above; nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,⁹¹ and recommended that

⁹¹ 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 March 9, 2023); 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/

discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4’s guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3-percent and 7-percent discount rates as “default” values, Circular A–4 also reminds agencies that “different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.” On discounting, Circular A–4 recognizes that “special ethical considerations arise when comparing benefits and costs across generations,” and Circular A–4 acknowledges that analyses may appropriately “discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.” In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that “Circular A–4 is a living document” and “the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.” Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this NOPR.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the

2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact (last accessed March 9, 2023); 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/201612/documents/sc_co2_tsd_august_2016.pdf (last accessed March 9, 2023); 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).

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 works to assess how best to incorporate the latest peer-reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent,

and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process, and DOE agrees with this determination. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.⁹² Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their “damage functions”—(*i.e.*, the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages)—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the model IAMs, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate

representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO₂ estimates. However, as discussed in the February 2021 SC–GHG TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE’s derivations of the SC–CO₂, SC–N₂O, and SC–CH₄ values used for this NOPR are discussed in the following sections, and the results of DOE’s analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO₂ values used for this NOPR were based on the values presented for the IWG’s February 2021 TSD, which are shown in table IV.12 in five-year increments from 2020 to 2050. shows the updated sets of SC–CO₂ estimates from the IWG’s TSD in 5-year increments from 2020 to 2050. The set of annual values that DOE used, which was adapted from estimates published by EPA,⁹³ is presented in appendix 14–A of the final rule TSD. These estimates are based on methods, assumptions, and parameters identical to the estimates published by the IWG (which were based on EPA modeling), and include values for 2051 to 2070. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–CO₂ estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

TABLE IV.10—ANNUAL SC–CO₂ VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050
[2020\$ per metric ton CO₂]

Year	Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile
2020	14	51	76	152

⁹² 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/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf (last accessed March 9, 2023).

⁹³ See EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards:

<https://www.epa.gov/ghg-reports/2023-and-later-model-year-light-duty-vehicle-ghg-emissions-standards>

Regulatory Impact Analysis, Washington, DC, December 2021. Available at nepis.epa.gov/Exec/QueryPDF.cgi?Dockey=P1013ORN.pdf (last accessed February 21, 2023).

TABLE IV.10—ANNUAL SC-CO₂ VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050—Continued
[2020\$ per metric ton CO₂]

Year	Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile
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-CO₂ estimates published by EPA, adjusted to 2020\$.⁹⁴ These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life CRE after 2070, but a lack of available SC-CO₂ estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

DOE multiplied the CO₂ emissions reduction estimated for each year by the SC-CO₂ value for that year in each of

the four cases. DOE adjusted the values to 2020\$ using the implicit price deflator for gross domestic product (“GDP”) from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC-CO₂ values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH₄ and SC-N₂O values used for this NOPR were based on the values

developed for the February 2021 SC-GHG TSD. Table IV.13 shows the updated sets of SC-CH₄ and SC-N₂O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14–A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CH₄ and SC-N₂O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC-CO₂.

TABLE IV.13—ANNUAL SC-CH₄ AND SC-N₂O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050
[2020\$ per metric ton]

Year	SC-CH ₄				SC-N ₂ O			
	Discount rate and statistic				Discount rate and statistic			
	5% 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	10,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

DOE multiplied the CH₄ and N₂O emissions reduction estimated for each year by the SC-CH₄ and SC-N₂O estimates for that year in each of the cases. DOE adjusted the values to 2022\$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH₄ and SC-N₂O estimates in each case.

2. Monetization of Other Emissions Impacts

For the NOPR, DOE estimated the monetized value of NO_x and SO₂ emissions reductions from electricity generation using the latest benefit per ton estimates for that sector from the EPA’s Benefits Mapping and Analysis Program.⁹⁵ DOE used EPA’s values for PM_{2.5}-related benefits associated with NO_x and SO₂ and for ozone-related benefits associated with NO_x for 2025, 2030, and 2040, calculated with discount rates of 3 percent and 7

percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE combined the EPA regional benefit-per-ton estimates with regional information on electricity consumption and emissions from AEO2023 to define weighted-average national values for NO_x and SO₂ (see appendix 14B of the NOPR TSD).

DOE also estimated the monetized value of NO_x and SO₂ emissions reductions from site use of natural gas

⁹⁴ See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis*, Washington, DC, December 2021. Available at www.federalregister.gov/documents/2021/10/30/

2021-27854/revised-2023-and-later-model-year-light-duty-vehicle-greenhouse-gas-emissions-standards (last accessed March 9, 2023).

⁹⁵ U.S. Environmental Protection Agency. Estimating the Benefit per Ton of Reducing

Directly-Emitted PM_{2.5}, PM_{2.5} Precursors and Ozone Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-and-ozone-precursors.

in CRE using benefit-per-ton estimates from the EPA's Benefits Mapping and Analysis Program. Although none of the sectors covered by EPA refers specifically to residential and commercial buildings, the sector called "area sources" would be a reasonable proxy for residential and commercial buildings.⁹⁶ The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.⁹⁷ DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

DOE multiplied the site emissions reduction (in tons) in each year by the associated \$/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2023*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption, and emissions in the *AEO2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new and amended energy conservation standards.

⁹⁶ "Area sources" represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, "area sources" would be fairly representative of small dispersed sources like homes and businesses.

⁹⁷ "Area sources" are a category in the 2018 document from EPA, but are not used in the 2021 document cited above. Available at www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentpptsd_2018.pdf (last accessed March 9, 2023).

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new and 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 equipment 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 equipment to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics ("BLS"). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.⁹⁸ 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

⁹⁸ See U.S. Department of Commerce—Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*. 1997. U.S. Government Printing Office: Washington, DC. Available at apps.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf (last accessed March 9, 2023).

and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 ("ImSET").⁹⁹ 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 there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rulemaking. Therefore, DOE used ImSET only to generate results for near-term timeframes (2028–2032), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for CRE. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for CRE, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential new or amended standards for 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 equipment classes, to the extent that there are such

⁹⁹ Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide*. 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL-24563.

interactions, and price elasticity of consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this NOPR, DOE analyzed the benefits and burdens of six TSLs for CRE. DOE developed TSLs that combine efficiency levels for each analyzed equipment class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential new and amended energy conservation standards for CRE. TSL 6 represents the maximum technologically feasible (“max-tech”) energy efficiency for all equipment classes. TSL 5 represents the highest efficiency level with positive LCC savings, including subgroups, for all equipment classes. TSL 4 represents the highest efficiency level with maximum LCC savings for all equipment classes. TSL 3 represents the

highest efficiency level with positive LCC savings and single speed compressor for equipment classes in which this design option was considered. TSL 2 represents the highest efficiency level with maximum LCC savings and single speed compressor for equipment classes with compressors, which also corresponds to the minimum efficiency level between TSL 4 and TSL 3. TSL 1 represents the minimum efficiency level with positive LCC savings.

TABLE V.1—TRIAL STANDARD LEVELS FOR CRE—EFFICIENCY LEVELS

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
VOP.RC.M	1	2	2	2	2	2
VOP.RC.L	1	2	2	2	2	2
VOP.SC.M	1	2	2	4	5	5
VCT.RC.M	1	1	3	1	3	4
VCT.RC.L	1	2	2	2	2	3
VCT.SC.M	1	1	1	3	3	7
VCT.SC.L	1	3	3	5	6	7
VCT.SC.I	1	2	2	2	2	4
VCT.SC.H	0	0	0	0	0	7
VCS.SC.M	1	3	3	3	4	5
VCS.SC.L	1	4	4	5	6	6
VCS.SC.I	1	4	4	5	6	6
VCS.SC.H	1	1	5	1	6	7
SVO.RC.M	1	1	2	1	2	2
SVO.SC.M	1	4	4	6	7	7
SOC.RC.M	1	1	3	1	3	4
SOC.SC.M	1	3	3	5	7	7
HZO.RC.M	1	1	1	1	1	1
HZO.RC.L	1	1	1	1	1	1
HZO.SC.M	1	2	2	3	5	5
HZO.SC.L	1	2	2	3	5	5
HCT.SC.M	0	0	0	0	0	7
HCT.SC.L	0	0	0	0	0	7
HCT.SC.I	1	0	0	1	2	7
HCS.SC.M	1	1	2	1	2	4
HCS.SC.L	1	1	1	1	1	3
CB.SC.M	1	2	4	2	5	6
CB.SC.L	1	4	4	5	6	6

Table V.2 presents the TSLs and the corresponding percent reduction in energy use below baseline by equipment

class. The baseline values for the self-contained equipment classes are

presented in table IV.6 in section IV.C.1.a of this document.

TABLE V.2—TRIAL STANDARD LEVELS FOR CRE—% ENERGY REDUCTION BELOW ANALYZED BASELINE

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)	TSL 6 (%)
VOP.RC.M	4.5	12.2	12.2	12.2	12.2	12.2
VOP.RC.L	1.6	7.1	7.1	7.1	7.1	7.1
VOP.SC.M	2.6	11.0	11.0	21.9	22.6	22.6
VCT.RC.M	9.5	9.5	10.8	9.5	10.8	11.6
VCT.RC.L	3.4	3.8	3.8	3.8	3.8	6.8
VCT.SC.M	3.0	3.0	3.0	24.8	24.8	27.7
VCT.SC.L	2.9	4.6	4.6	16.7	17.0	20.1
VCT.SC.I	0.6	2.6	2.6	2.6	2.6	8.8
VCT.SC.H	0.0	0.0	0.0	0.0	0.0	41.3
VCS.SC.M	26.7	40.4	40.4	40.4	50.1	51.0
VCS.SC.L	6.6	13.8	13.8	22.6	23.2	23.2
VCS.SC.I	4.8	10.0	10.0	22.0	22.1	22.1
VCS.SC.H	53.9	53.9	69.3	53.9	77.6	78.1
SVO.RC.M	5.0	5.0	12.2	5.0	12.2	12.2
SVO.SC.M	3.4	14.9	14.9	22.6	23.7	23.7

TABLE V.2—TRIAL STANDARD LEVELS FOR CRE—% ENERGY REDUCTION BELOW ANALYZED BASELINE—Continued

Equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)	TSL 6 (%)
SOC.RC.M	10.9	10.9	11.1	10.9	11.1	11.2
SOC.SC.M	13.7	22.9	22.9	38.9	39.8	39.8
HZO.RC.M	2.3	2.3	2.3	2.3	2.3	2.3
HZO.RC.L	1.1	1.1	1.1	1.1	1.1	1.1
HZO.SC.M	3.8	5.2	5.2	14.7	16.9	16.9
HZO.SC.L	2.4	3.1	3.1	17.7	18.4	18.4
HCT.SC.M	0.0	0.0	0.0	0.0	0.0	28.4
HCT.SC.L	0.0	0.0	0.0	0.0	0.0	43.2
HCT.SC.I	30.0	0.0	0.0	30.0	33.4	42.5
HCS.SC.M	36.7	36.7	44.2	36.7	44.2	45.4
HCS.SC.L	7.7	7.7	7.7	7.7	7.7	44.3
CB.SC.M	22.4	50.3	58.2	50.3	60.9	61.2
CB.SC.L	15.6	38.4	38.4	54.1	54.4	54.4

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on CRE consumers by looking at the effects that potential new and 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 equipment 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.*, equipment 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 equipment lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.3 through table V.58 show the LCC and PBP results for the TSLs considered for each equipment class. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment. In the second

table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.9 of this document). Because some consumers purchase equipment with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline equipment 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 an equipment 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.3—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR CB.SC.L

TSL	Efficiency level	Average costs (2022F\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	2,413.64	275.08	2,506.40	4,780.95	.....	14.0
	1	2,447.35	239.80	2,212.22	4,518.53	1.0	14.0
	2	2,480.02	195.85	1,840.56	4,177.65	0.8	14.0
	3	2,496.88	192.38	1,814.45	4,167.42	1.0	14.0
2,3	4	2,513.22	188.05	1,780.62	4,148.99	1.1	14.0
4	5	2,654.88	155.98	1,527.83	4,029.69	2.0	14.0
5,6	6	2,675.72	155.68	1,613.81	4,135.31	2.2	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.4—AVERAGE LCC SAVINGS FOR CB.SC.L

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1	1	263.09	0.0
	2	524.57	0.0
	3	534.80	0.0
2,3	4	553.24	0.0
4	5	672.54	0.2
5,6	6	566.92	1.3

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.5—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR CB.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	1,750.66	86.90	797.20	2,452.05	.....	13.9
1	1	1,767.51	71.40	669.43	2,340.22	1.1	13.9
2,4	2	1,783.85	52.08	507.74	2,193.97	1.0	13.9
3	3	1,800.70	49.43	488.95	2,191.11	1.3	13.9
3	4	1,817.04	46.12	464.25	2,181.85	1.6	13.9
5	5	1,958.70	45.03	484.78	2,336.27	5.0	13.9
6	6	1,992.58	44.94	571.95	2,455.47	5.8	13.9

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.6—AVERAGE LCC SAVINGS FOR CB.SC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	111.31	0.0
2,4	2	208.70	0.0
	3	190.07	4.1
3	4	199.32	3.3
5	5	44.90	45.9
6	6	(74.29)	73.7

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.7—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCS.SC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–5	Baseline	1,646.86	44.53	428.89	1,984.18	.....	14.0
1–5	1	1,661.72	41.62	407.13	1,976.45	5.1	14.0
	2	1,803.38	28.51	321.35	2,024.44	9.8	14.0
6	3	1,827.70	27.85	404.44	2,130.49	10.8	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.8—AVERAGE LCC SAVINGS FOR HCS.SC.L

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1–5	1	7.77	22.2
	2	(41.22)	72.9
6	3	(147.27)	96.1

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.9—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCS.SC.M

TSL	Efficiency level	Average costs 2022\$				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2,4	Baseline	1,658.31	37.22	382.20	1,953.10	.....	14.0
3,5	1	1,667.94	25.66	279.21	1,859.23	0.8	14.0
	2	1,682.80	23.32	262.46	1,856.56	1.8	14.0
	3	1,707.13	23.02	348.86	1,965.99	3.4	14.0

TABLE V.9—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCS.SC.M—Continued

TSL	Efficiency level	Average costs 2022\$				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
6	4	1,848.81	22.94	379.24	2,130.58	13.3	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.10—AVERAGE LCC SAVINGS FOR HCS.SC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1,2,4	1	94.14	0.0
3,5	2	84.89	4.9
	3	(24.55)	73.5
6	4	(189.13)	99.1

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.11—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCT.SC.I

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
2,3	Baseline	1,532.98	115.03	1,152.21	2,599.07	.....	14.0
1,4	1	1,674.44	85.83	923.71	2,504.07	4.8	14.0
5	2	1,764.26	82.51	870.76	2,535.89	7.1	14.0
	3	1,795.72	81.94	954.60	2,649.42	7.9	14.0
	4	1,869.93	75.95	901.32	2,666.17	8.6	14.0
	5	1,882.40	74.88	891.73	2,668.35	8.7	14.0
	6	1,885.31	74.52	888.53	2,667.90	8.7	14.0
6	7	2,146.62	73.68	881.07	2,907.06	14.8	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.12—AVERAGE LCC SAVINGS FOR HCT.SC.I

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1,4	1	93.84	15.0
5	2	55.03	32.5
	3	(58.42)	56.4
	4	(68.58)	63.7
	5	(69.11)	65.2
	6	(68.66)	65.0
6	7	(306.51)	85.8

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.13—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCT.SC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–5	Baseline	1,426.49	71.52	740.91	2,089.70	.....	13.9
	1	1,567.94	53.78	614.92	2,097.45	8.0	13.9
	2	1,657.75	50.47	562.23	2,129.67	11.0	13.9
	3	1,689.21	49.85	645.27	2,242.46	12.1	13.9
	4	1,763.42	46.64	616.76	2,284.11	13.5	13.9
	5	1,775.89	46.06	611.63	2,290.76	13.7	13.9

TABLE V.13—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCT.SC.L—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
6	6	1,778.80	45.87	609.92	2,291.80	13.7	13.9
	7	2,040.10	45.42	605.93	2,534.87	23.5	13.9

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.14—AVERAGE LCC SAVINGS FOR HCT.SC.L

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
6	1	(8.05)	42.8
	2	(39.67)	57.0
	3	(152.24)	71.5
	4	(178.19)	81.8
	5	(180.80)	83.9
	6	(181.84)	83.8
	7	(421.60)	90.5

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.15—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HCT.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–5	Baseline	1,310.11	33.30	378.46	1,617.43	.....	14.0
	1	1,451.54	30.61	386.32	1,759.03	52.6	14.0
	2	1,541.34	27.30	333.51	1,791.13	38.5	14.0
	3	1,572.79	27.05	420.09	1,907.45	42.1	14.0
	4	1,646.98	25.79	408.84	1,966.35	44.9	14.0
	5	1,659.45	25.56	406.81	1,976.12	45.1	14.0
	6	1,662.35	25.48	406.14	1,978.19	45.1	14.0
	7	1,923.61	25.31	404.56	2,223.67	76.8	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.16—AVERAGE LCC SAVINGS FOR HCT.SC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
6	1	(141.71)	72.3
	2	(164.18)	76.8
	3	(279.83)	77.8
	4	(307.69)	87.5
	5	(309.50)	89.8
	6	(311.58)	89.8
	7	(551.40)	91.4

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.17—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HZO.RC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	6,037.15	1,214.59	11,439.53	17,476.68	.....	13.0

TABLE V.17—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HZO.RC.L—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–6	1	6,180.64	1,203.55	11,249.48	17,430.12	13.0	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.18—AVERAGE LCC SAVINGS FOR HZO.RC.L

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1–6	1	46.57	7.8

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.19—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HZO.RC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–6	Baseline	6,023.23	543.01	5,247.93	11,271.17	.....	13.0
	1	6,166.77	532.57	5,064.11	11,230.88	13.8	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.20—AVERAGE LCC SAVINGS FOR HZO.RC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1–6	1	40.29	10.8

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.21—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HZO.SC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	3,086.17	1,070.30	9,605.52	12,578.04	.....	13.1
	1	3,102.46	1,048.99	9,428.65	12,416.86	0.8	13.1
	2,3	3,117.28	1,042.34	9,374.71	12,377.19	1.1	13.1
	4	3,399.80	911.71	8,295.65	11,570.22	2.0	13.1
	5	3,425.87	908.91	8,358.49	11,658.16	2.1	13.1
5,6	5	3,542.47	905.58	8,287.58	11,699.54	2.8	13.1

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.22—AVERAGE LCC SAVINGS FOR HZO.SC.L

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	160.85	0.0
2,3	2	193.59	0.0
4	3	971.22	0.2
	4	883.28	0.5

TABLE V.22—AVERAGE LCC SAVINGS FOR HZO.SC.L—Continued

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
5,6	5	841.89	0.9

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.23—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HZO.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	2,397.43	429.17	3,921.92	6,226.78	.....	13.1
1	1	2,412.25	415.60	3,812.49	6,131.59	1.1	13.1
2,3	2	2,427.07	410.44	3,771.80	6,105.15	1.6	13.1
4	3	2,568.36	376.54	3,509.56	5,978.72	3.3	13.1
	4	2,594.43	371.96	3,556.41	6,050.63	3.4	13.1
5,6	5	2,711.05	368.63	3,398.99	6,005.32	5.2	13.1

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.24—AVERAGE LCC SAVINGS FOR HZO.SC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	95.03	0.0
2,3	2	117.44	0.2
4	3	226.50	6.8
	4	154.59	19.6
5,6	5	199.91	14.8

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.25—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SOC.RC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	13,455.98	847.97	8,984.53	22,440.51	.....	12.9
1,2,4	1	13,653.31	770.99	7,801.16	21,454.47	2.6	12.9
	2	13,701.42	769.68	7,789.05	21,490.47	3.1	12.9
3,5	3	13,712.64	769.26	7,785.15	21,497.79	3.3	12.9
6	4	14,720.84	768.26	7,775.94	22,496.78	15.9	12.9

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.26—AVERAGE LCC SAVINGS FOR SOC.RC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1,2,4	1	986.27	0.0
	2	944.21	0.6
3,5	3	929.51	1.4
6	4	(70.50)	70.9

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.27—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SOC.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	15,074.90	1,010.13	10,218.96	24,736.27	.....	13.0
1	1	15,084.50	894.71	9,215.75	23,742.30	0.1	13.0
	2	15,216.87	841.08	8,823.37	23,477.38	0.8	13.0
2,3	3	15,292.93	816.47	8,630.16	23,357.41	1.1	13.0
	4	15,575.42	761.20	8,212.91	23,212.16	2.0	13.0
4	5	15,772.73	681.78	7,036.90	22,226.13	2.1	13.0
	6	15,820.79	676.67	6,992.45	22,227.96	2.2	13.0
5,6	7	16,888.21	673.64	7,052.97	23,316.27	5.4	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.28—AVERAGE LCC SAVINGS FOR SOC.SC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	994.55	0.0
	2	1,085.17	0.4
2,3	3	1,015.54	0.9
	4	1,063.82	3.7
4	5	1,834.72	0.0
	6	1,832.85	0.0
5,6	7	698.37	25.6

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.29—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SVO.RC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	6,998.28	1,115.54	11,064.57	18,062.84	.....	13.0
1,2,4	1	7,222.52	1,068.46	10,317.17	17,539.69	4.8	13.0
3,5,6	2	7,833.88	1,001.65	9,696.11	17,529.99	7.3	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.30—AVERAGE LCC SAVINGS FOR SVO.RC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1,2,4	1	522.85	0.0
3,5,6	2	406.59	18.4

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.31—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SVO.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	4,779.96	902.18	8,199.62	12,793.46	.....	13.0
1	1	4,810.58	876.57	7,995.58	12,618.85	1.2	13.0
	2	4,844.20	864.11	7,897.08	12,552.66	1.7	13.0
	3	4,876.77	848.60	7,771.84	12,458.72	1.8	13.0
2,3	4	5,080.56	789.90	7,264.50	12,147.21	2.7	13.0
	5	5,363.08	746.66	6,953.23	12,107.44	3.8	13.0

TABLE V.31—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR SVO.SC.M—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
4	6	5,479.68	731.65	6,718.66	11,984.91	4.1	13.0
5,6	7	5,550.97	723.43	6,733.74	12,068.50	4.3	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.32—AVERAGE LCC SAVINGS FOR SVO.SC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1	1	175.56	0.0
	2	237.26	0.2
	3	324.02	0.1
2,3	4	600.52	0.1
	5	586.37	8.2
4	6	692.32	4.6
5,6	7	602.17	11.0

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.33—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.H

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2,4	Baseline	3,949.97	101.23	969.24	4,701.69	.....	14.0
	1	3,959.60	55.10	558.87	4,300.41	0.2	14.0
	2	3,991.29	50.58	535.86	4,307.35	0.8	14.0
	3	4,021.01	44.95	501.90	4,301.47	1.3	14.0
	4	4,037.86	43.59	494.32	4,309.82	1.5	14.0
	5	4,054.20	41.89	483.62	4,314.55	1.8	14.0
	6	4,195.84	34.74	451.10	4,415.86	3.7	14.0
3	7	4,242.12	34.34	536.33	4,544.82	4.4	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.34—AVERAGE LCC SAVINGS FOR VCS.SC.H

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1,2,4	1	399.54	0.0
	2	270.97	17.8
	3	276.86	15.0
	4	268.51	17.4
3	5	263.78	18.4
5	6	162.47	31.6
6	7	33.51	52.8

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.35—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.I

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	4,529.28	627.67	5,752.96	10,031.71	.....	14.1
	1	4,538.91	602.08	5,524.85	9,812.69	0.4	14.1

TABLE V.35—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.I—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	2	4,568.63	584.86	5,387.74	9,703.65	0.9	14.1
	3	4,585.48	580.39	5,352.37	9,684.20	1.2	14.1
2,3	4	4,601.82	574.81	5,307.05	9,654.31	1.4	14.1
4	5	4,885.14	511.08	4,801.64	9,416.52	3.1	14.1
5,6	6	4,931.42	510.61	4,886.41	9,545.00	3.4	14.1

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.36—AVERAGE LCC SAVINGS FOR VCS.SC.I

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1	1	219.02	0.0
	2	328.05	0.0
	3	347.51	0.0
2,3	4	377.40	0.0
4	5	615.19	3.6
5,6	6	486.70	8.9

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.37—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	4,195.10	411.78	3,767.90	7,721.94	.....	14.0
1	1	4,204.73	388.98	3,565.71	7,528.82	0.4	14.0
	2	4,234.45	373.64	3,446.25	7,437.36	1.0	14.0
	3	4,251.30	369.23	3,411.70	7,418.70	1.3	14.0
2,3	4	4,267.64	363.74	3,367.39	7,389.78	1.5	14.0
4	5	4,409.29	332.97	3,125.76	7,281.65	2.7	14.0
5,6	6	4,455.57	331.05	3,197.27	7,396.77	3.2	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.38—AVERAGE LCC SAVINGS FOR VCS.SC.L

TSL	Efficiency level	Average LCC savings * (2022\$)	% of consumers that experience net cost
1	1	193.07	0.0
	2	265.56	0.1
	3	284.18	0.2
2,3	4	309.04	0.2
4	5	375.85	4.3
5,6	6	260.73	17.1

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.39—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	3,956.46	112.72	1,080.77	4,809.78	.....	14.1
1	1	3,966.08	87.24	854.78	4,592.87	0.4	14.1

TABLE V.39—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCS.SC.M—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
2–4	2	3,995.80	77.73	786.61	4,552.70	1.1	14.1
	3	4,012.13	74.16	759.47	4,540.95	1.4	14.1
5	4	4,153.76	64.87	709.37	4,624.33	4.1	14.1
6	5	4,200.04	64.02	790.45	4,749.02	5.0	14.1

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.40—AVERAGE LCC SAVINGS FOR VCS.SC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	217.33	0.0
	2	235.40	1.3
2–4	3	240.66	1.6
5	4	128.81	27.0
6	5	0.17	56.2

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.41—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.RC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	9,261.69	1,277.59	12,897.96	22,159.65		14.0
1	1	9,486.23	1,241.24	12,349.78	21,836.00	6.2	14.0
2–5	2	9,525.84	1,236.13	12,299.80	21,825.64	6.4	14.0
6	3	13,084.28	1,204.29	11,988.81	25,073.10	52.2	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.42—AVERAGE LCC SAVINGS FOR VCT.RC.L

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	323.67	0.0
2–5	2	331.04	0.4
6	3	(2,934.72)	99.7

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.43—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.RC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	9,052.59	433.39	4,761.74	13,814.33		13.9
1,2,4	1	9,277.06	398.58	4,228.77	13,505.84	6.5	13.9
	2	9,446.82	394.88	4,192.70	13,639.51	10.2	13.9
3,5	3	9,486.42	393.69	4,181.07	13,667.49	10.9	13.9
6	4	13,043.92	390.88	4,153.62	17,197.54	93.9	13.9

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.44—AVERAGE LCC SAVINGS FOR VCT.RC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1,2,4	1	308.65	0.0
	2	171.49	8.1
3,5	3	133.62	24.0
6	4	(3,397.02)	100.0

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.45—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.SC.H

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–5	Baseline	4,470.66	126.82	1,370.85	5,586.32	.....	14.0
	1	4,531.98	116.79	1,315.87	5,589.16	6.1	14.0
	2	4,565.12	112.31	1,285.13	5,589.67	6.5	14.0
	3	4,706.57	97.60	1,186.12	5,624.01	8.1	14.0
	4	4,823.32	85.18	1,008.73	5,556.70	8.5	14.0
	5	4,907.08	83.82	996.65	5,623.60	10.2	14.0
	6	4,953.92	83.25	1,080.12	5,751.23	11.1	14.0
6	7	6,377.25	82.48	1,073.29	7,086.37	43.0	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.46—AVERAGE LCC SAVINGS FOR VCT.SC.H

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
	1	(2.49)	30.6
	2	(2.54)	42.4
	3	(36.07)	62.7
	4	33.12	46.7
	5	(33.78)	63.8
	6	(161.50)	79.4
6	7	(1,496.81)	96.9

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.47—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.SC.I

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	6,606.39	717.90	6,723.31	12,967.00	.....	14.0
1	1	6,622.23	714.41	6,692.45	12,951.12	4.6	14.0
2–5	2	6,738.97	701.99	6,515.27	12,884.25	8.3	14.0
	3	7,046.29	690.86	6,505.12	13,164.53	16.3	14.0
6	4	8,469.43	664.72	6,273.60	14,277.88	35.0	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.48—AVERAGE LCC SAVINGS FOR VCT.SC.I

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1	1	15.76	1.5
2–5	2	77.46	1.1
	3	(226.28)	85.6

TABLE V.48—AVERAGE LCC SAVINGS FOR VCT.SC.I—Continued

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
6	4	(1,318.52)	100.0

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.49—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.SC.I

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	Baseline	6,441.77	616.41	5,793.30	11,866.44	.....	14.0
	1	6,471.45	601.18	5,674.48	11,775.59	2.0	14.0
	2	6,487.76	595.37	5,627.26	11,743.75	2.2	14.0
2,3	3	6,503.61	592.42	5,601.15	11,732.58	2.6	14.0
	4	6,786.54	541.91	5,215.01	11,613.15	4.6	14.0
4	5	6,903.32	529.48	5,037.56	11,545.79	5.3	14.0
5	6	6,956.92	527.53	5,108.98	11,667.74	5.8	14.0
6	7	8,380.48	511.74	4,968.73	12,869.46	18.5	14.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.50—AVERAGE LCC SAVINGS FOR VCT.SC.I

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1	1	91.06	0.3%
2,3	2	111.65	0.6%
	3	122.78	0.7%
	4	174.92	22.6%
4	5	242.33	18.8%
5	6	120.34	37.5%
6	7	(1,093.50)	98.2%

*The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.51—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VCT.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–3	Baseline	4,523.51	173.05	1,797.38	6,066.11	.....	13.9
	1	4,539.82	168.71	1,763.44	6,047.55	3.8	13.9
	2	4,681.25	149.19	1,623.12	6,040.70	6.6	13.9
4,5	3	4,798.00	136.78	1,446.54	5,974.28	7.6	13.9
	4	4,865.91	135.23	1,432.85	6,024.67	9.1	13.9
	5	4,881.76	134.73	1,428.43	6,035.20	9.4	13.9
6	6	4,928.59	133.74	1,507.74	6,158.71	10.3	13.9
	7	6,351.83	132.58	1,497.52	7,491.48	45.2	13.9

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.52—AVERAGE LCC SAVINGS FOR VCT.SC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1–3	1	18.80	5.7%
4,5	2	20.52	29.8
	3	82.53	20.1
	4	30.92	42.4
	5	20.36	45.9

TABLE V.52—AVERAGE LCC SAVINGS FOR VCT.SC.M—Continued

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
6	6 7	(103.42) (1,417.22)	64.6 100.0

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.53—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VOP.RC.L

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	Baseline	9,804.18	3,953.75	37,429.46	47,233.63	.....	13.0
1	1	10,028.41	3,901.88	36,591.13	46,619.55	4.3	13.0
2–6	2	10,639.77	3,719.92	34,905.64	45,545.41	3.6	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.54—AVERAGE LCC SAVINGS FOR VOP.RC.L

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1	1	615.37	0.0
2–6	2	1,524.52	0.0

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.55—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VOP.RC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	Baseline	8,943.72	1,436.26	14,170.99	23,114.71	.....	13.0
1	1	9,167.99	1,381.81	13,308.67	22,476.66	4.1	13.0
2–6	2	9,779.42	1,290.04	12,457.83	22,237.25	5.7	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.56—AVERAGE LCC SAVINGS FOR VOP.RC.M

TSL	Efficiency level	Average LCC savings * (2022\$)	% of Consumers that experience net cost
1	1	638.01	0.0
2–6	2	707.13	8.2

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

TABLE V.57—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VOP.SC.M

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	Baseline	6,563.78	1,076.62	9,936.29	16,264.24	.....	13.0
1	1	6,612.64	1,053.03	9,745.17	16,120.22	2.1	13.0
2,3	2	6,816.42	977.96	9,092.80	15,664.28	2.6	13.0
.....	3	7,098.92	897.61	8,457.71	15,301.52	3.0	13.0
4	4	7,242.43	879.28	8,164.31	15,146.45	3.4	13.0

TABLE V.57—LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VOP.SC.M—Continued

TSL	Efficiency level	Average costs (2022\$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
5,6	5	7,303.09	872.97	8,196.09	15,236.71	3.6	13.0

Note: The results for each EL represent the average value if all purchasers in the sample use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.58—AVERAGE LCC SAVINGS FOR VOP.SC.M

TSL	Efficiency level	Average LCC savings* (2022\$)	% of consumers that experience net cost
1	1	143.30	0.6
2,3	2	590.02	0.0
	3	927.32	1.0
4	4	1,082.34	0.4
5,6	5	992.17	1.0

* The calculation considers only affected consumers. It excludes purchasers whose purchasing decision would not change under a standard set at the corresponding EL, *i.e.*, those with zero LCC savings.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on small businesses. Table V.59 compares the average LCC

savings and PBP at each efficiency level for small businesses with the entire consumer sample for CRE. In most cases, the average LCC savings and PBP for small businesses at the considered

efficiency levels are not substantially different from the average for all businesses. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroup.

TABLE V.59—AVERAGE LCC AND PBP RESULTS COMPARISON FOR SMALL BUSINESSES FOR CRE

Equipment class	EL	Average LCC savings (2022\$)		Simple payback period (years)		Net cost (%)	
		Small business	All purchasers	Small business	All purchasers	Small business	All purchasers
CB.SC.L	1	227.9	263.09	1.0	1.0	0	0
	2	455.5	524.57	0.8	0.8	0	0
	3	462.59	534.80	1.0	1.0	0	0
	4	476.95	553.24	1.1	1.1	0	0
	5	565.61	672.54	2.0	2.0	0	0
	6	473.70	566.92	2.2	2.2	2	1
CB.SC.M	1	96.14	111.31	1.1	1.1	0	0
	2	180.72	208.70	1.0	1.0	0	0
	3	162.71	190.07	1.3	1.3	5	4
	4	168.99	199.32	1.6	1.6	4	3
	5	16.80	44.90	5.0	5.0	53	46
	6	(88.63)	(74.29)	5.8	5.8	79	74
HCS.SC.L	1	5.13	7.77	5.11	5.1	28	22
	2	(54.10)	(41.22)	9.77	9.8	77	73
	3	(146.77)	(147.27)	10.84	10.8	98	96
	4	81.56	94.14	0.83	0.8	0	0
HCS.SC.M	2	71.87	84.89	1.76	1.8	6	5
	3	(23.76)	(24.55)	3.44	3.4	76	74
	4	(184.84)	(189.13)	13.34	13.3	99	99
	5	66.18	93.84	4.84	4.8	19	15
HCT.SC.I	2	21.88	55.03	7.11	7.1	40	33
	3	(78.05)	(58.42)	7.94	7.9	60	56
	4	(93.01)	(68.58)	8.62	8.6	69	64
	5	(94.20)	(69.11)	8.70	8.7	70	65
	6	(94.15)	(68.66)	8.70	8.7	70	65
	7	(334.29)	(306.51)	14.84	14.8	89	86
	1	(23.30)	(8.05)	7.97	8.0	49	43
HCT.SC.L	2	(61.20)	(39.67)	10.99	11.0	61	57
	3	(160.47)	(152.24)	12.13	12.1	75	72
	4	(189.47)	(178.19)	13.54	13.5	85	82
	5	(192.51)	(180.80)	13.72	13.7	87	84
	6	(193.78)	(181.84)	13.73	13.7	87	84
	7	(435.54)	(421.60)	23.51	23.5	91	90

TABLE V.59—AVERAGE LCC AND PBP RESULTS COMPARISON FOR SMALL BUSINESSES FOR CRE—Continued

Equipment class	EL	Average LCC savings (2022\$)		Simple payback period (years)		Net cost (%)	
		Small business	All purchasers	Small business	All purchasers	Small business	All purchasers
HCT.SC.M	1	(140.89)	(141.71)	52.63	52.6	72	72
	2	(170.95)	(164.18)	38.53	38.5	77	77
	3	(272.85)	(279.83)	42.07	42.1	78	78
	4	(303.34)	(307.69)	44.85	44.9	87	87
	5	(305.59)	(309.50)	45.14	45.1	90	90
	6	(307.77)	(311.58)	45.07	45.1	90	90
	7	(549.59)	(551.40)	76.76	76.8	91	91
HZO.RC.L	1	20.91	46.57	12.99	13.0	32	8
HZO.RC.M	1	15.27	40.29	13.75	13.8	38	11
HZO.SC.L	1	140.87	160.85	0.76	0.8	0	0
	2	168.35	193.59	1.11	1.1	0	0
	3	826.60	971.22	1.98	2.0	0	0
	4	749.21	883.28	2.10	2.1	1	0
	5	698.01	841.89	2.77	2.8	1	1
HZO.SC.M	1	82.72	95.03	1.09	1.1	0	0
	2	101.05	117.44	1.58	1.6	0	0
	3	182.80	226.50	3.25	3.3	8	7
	4	119.58	154.59	3.44	3.4	24	20
	5	141.74	199.91	5.18	5.2	22	15
SOC.RC.M	1	828.50	986.27	2.56	2.6	0	0
	2	785.91	944.21	3.13	3.1	1	1
	3	771.98	929.51	3.26	3.3	1	1
	4	(229.00)	(70.50)	15.87	15.9	82	71
SOC.SC.M	1	880.09	994.55	0.08	0.1	0	0
	2	947.58	1085.17	0.84	0.8	0	0
	3	880.22	1015.54	1.13	1.1	1	1
	4	894.49	1063.82	2.01	2.0	5	4
	5	1551.11	1834.72	2.13	2.1	0	0
	6	1543.96	1832.85	2.24	2.2	0	0
	7	422.14	698.37	5.39	5.4	32	26
SVO.RC.M	1	422.15	522.85	4.76	4.8	0	0
	2	253.11	406.59	7.34	7.3	26	18
SVO.SC.M	1	152.71	175.56	1.20	1.2	0	0
	2	203.94	237.26	1.69	1.7	0	0
	3	277.65	324.02	1.81	1.8	0	0
	4	500.97	600.52	2.68	2.7	0	0
	5	461.06	586.37	3.75	3.8	11	8
	6	540.59	692.32	4.10	4.1	7	5
	7	456.68	602.17	4.31	4.3	16	11
VCS.SC.H	1	349.72	399.54	0.21	0.2	0	0
	2	233.72	270.97	0.82	0.8	20	18
	3	235.66	276.86	1.26	1.3	17	15
	4	226.40	268.51	1.52	1.5	19	17
	5	220.36	263.78	1.76	1.8	20	18
	6	114.89	162.47	3.70	3.7	36	32
	7	(0.49)	33.51	4.37	4.4	57	53
VCS.SC.I	1	191.10	219.02	0.38	0.4	0	0
	2	283.57	328.05	0.92	0.9	0	0
	3	298.70	347.51	1.19	1.2	0	0
	4	323.05	377.40	1.37	1.4	0	0
	5	498.66	615.19	3.05	3.1	5	4
	6	383.73	486.70	3.44	3.4	11	9
VCS.SC.L	1	168.73	193.07	0.42	0.4	0	0
	2	229.45	265.56	1.03	1.0	0	0
	3	243.92	284.18	1.32	1.3	0	0
	4	264.03	309.04	1.51	1.5	0	0
	5	307.51	375.85	2.72	2.7	5	4
	6	204.16	260.73	3.23	3.2	20	17
VCS.SC.M	1	189.78	217.33	0.38	0.4	0	0
	2	202.56	235.40	1.12	1.1	1	1
	3	205.44	240.66	1.44	1.4	2	2
	4	91.46	128.81	4.12	4.1	31	27
	5	(23.05)	0.17	5.00	5.0	61	56
VCT.RC.L	1	245.49	323.67	6.18	6.2	0	0
	2	246.83	331.04	6.37	6.4	0	0
	3	(3056.29)	(2934.72)	52.15	52.2	100	100
VCT.RC.M	1	233.10	308.65	6.45	6.5	0	0
	2	91.96	171.49	10.24	10.2	26	8

TABLE V.59—AVERAGE LCC AND PBP RESULTS COMPARISON FOR SMALL BUSINESSES FOR CRE—Continued

Equipment class	EL	Average LCC savings (2022\$)		Simple payback period (years)		Net cost (%)	
		Small business	All purchasers	Small business	All purchasers	Small business	All purchasers
VCT.SC.H	3	57.11	133.62	10.93	10.9	45	24
	4	(3476.87)	(3397.02)	93.89	93.9	100	100
	1	(8.77)	(2.49)	6.12	6.1	34	31
	2	(11.19)	(2.54)	6.51	6.5	47	42
	3	(55.34)	(36.07)	8.07	8.1	67	63
	4	(8.95)	33.12	8.47	8.5	57	47
	5	(77.88)	(33.78)	10.15	10.2	71	64
VCT.SC.I	6	(192.35)	(161.50)	11.09	11.1	86	79
	7	(1538.28)	(1496.81)	43.00	43.0	97	97
	1	11.97	15.76	4.55	4.6	3	2
	2	51.25	77.46	8.34	8.3	6	1
	3	(244.33)	(226.28)	16.27	16.3	89	86
	4	(1372.20)	(1318.52)	35.04	35.0	100	100
	1	76.90	91.06	1.95	2.0	0	0
VCT.SC.L	2	93.55	111.65	2.19	2.2	1	1
	3	101.44	122.78	2.58	2.6	1	1
	4	118.16	174.92	4.63	4.6	29	23
	5	161.77	242.33	5.31	5.3	26	19
	6	51.55	120.34	5.80	5.8	46	38
	7	(1182.18)	(1093.50)	18.52	18.5	99	98
	1	14.68	18.80	3.75	3.8	6	6
VCT.SC.M	2	0.46	20.52	6.61	6.6	36	30
	3	43.04	82.53	7.57	7.6	29	20
	4	(10.13)	30.92	9.05	9.1	52	42
	5	(21.33)	20.36	9.35	9.4	55	46
	6	(132.37)	(103.42)	10.31	10.3	69	65
	7	(1451.68)	(1417.22)	45.18	45.2	100	100
	1	502.94	615.37	4.32	4.3	0	0
VOP.RC.L	2	1234.55	1524.52	3.57	3.6	0	0
	1	522.36	638.01	4.12	4.1	0	0
VOP.RC.M	2	516.94	707.13	5.72	5.7	13	8
	1	121.91	143.30	2.07	2.1	1	1
VOP.SC.M	2	495.13	590.02	2.56	2.6	0	0
	3	764.98	927.32	2.99	3.0	1	1
	4	882.37	1082.34	3.44	3.4	1	0
	5	798.96	992.17	3.63	3.6	2	1

Notes: The results for each EL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product. The savings represent the average LCC savings for affected consumers.

c. Rebuttable Presumption Payback

As discussed in section IV.F.10 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for an equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6316(e)(1); 42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the

considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for CRE. 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.60 presents the rebuttable-presumption payback periods for the considered TSLs for CRE. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR

are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6316(e)(1) and 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.60—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Equipment class	Rebuttable payback period (years)						
	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
CB.SC.L	0.9	0.7	0.9	1.0	1.8	2.0	.....
CB.SC.M	1.0	0.8	1.2	1.4	4.4	5.1	.....
HCS.SC.L	4.5	8.7	9.6	.....	.....	.....	.....

TABLE V.60—REBUTTABLE-PRESUMPTION PAYBACK PERIODS—Continued

Equipment class	Rebuttable payback period (years)						
	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
HCS.SC.M	0.7	1.6	3.0	11.8	.....	.....	.....
HCT.SC.I	4.3	6.3	7.1	7.7	7.7	7.7	13.2
HCT.SC.L	7.1	9.7	10.7	12.0	12.1	12.1	20.8
HCT.SC.M	46.7	34.2	37.3	39.8	40.0	40.0	68.1
HZO.RC.L	11.6	.....	.....	.....	.....	.....	.....
HZO.RC.M	12.3	.....	.....	.....	.....	.....	.....
HZO.SC.L	0.7	1.0	1.8	1.9	2.5	.....	.....
HZO.SC.M	1.0	1.4	2.9	3.1	4.6	.....	.....
SOC.RC.M	2.3	2.8	2.9	14.1	.....	.....	.....
SOC.SC.M	0.1	0.8	1.0	1.8	1.9	2.0	4.8
SVO.RC.M	4.3	6.6	.....	.....	.....	.....	.....
SVO.SC.M	1.1	1.5	1.6	2.4	3.3	3.7	3.9
VCS.SC.H	0.2	0.7	1.1	1.4	1.6	3.3	3.9
VCS.SC.I	0.3	0.8	1.1	1.2	2.7	3.0	.....
VCS.SC.L	0.4	0.9	1.2	1.3	2.4	2.9	.....
VCS.SC.M	0.3	1.0	1.3	3.7	4.5	.....	.....
VCT.RC.L	5.5	5.7	46.3	.....	.....	.....	.....
VCT.RC.M	5.7	9.1	9.7	83.3	.....	.....	.....
VCT.SC.H	5.4	5.8	7.2	7.5	9.0	9.8	38.1
VCT.SC.I	4.0	7.4	14.4	31.1	.....	.....	.....
VCT.SC.L	1.7	1.9	2.3	4.1	4.7	5.1	16.4
VCT.SC.M	3.3	5.9	6.7	8.0	8.3	9.1	40.0
VOP.RC.L	3.9	3.2	.....	.....	.....	.....	.....
VOP.RC.M	3.7	5.1	.....	.....	.....	.....	.....
VOP.SC.M	1.8	2.3	2.7	3.1	3.2	.....	.....

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of CRE. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from new and amended standards. Table V.61 summarizes the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on manufacturers of CRE, as well as the conversion costs that DOE estimates manufacturers of CRE would incur at each TSL.

The impact of potential new and amended energy conservation standards was analyzed under two scenarios: (1) the preservation of gross margin percentage; and (2) the preservation of operating profit, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentages applies a “gross margin percentage” of 29 percent for all equipment classes

across all efficiency levels.¹⁰⁰ This scenario assumes that a manufacturer’s per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential new and amended energy conservation standards.

The preservation-of-operating-profit scenario reflects manufacturers’ concerns about their inability to maintain margins as MPCs increase to reach more stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue. The preservation-of-operating-profit scenario represents the lower (or more severe) bound to industry profitability under potential new and amended energy conservation standards.

Each of the modeled scenarios resulted in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2057). The “change in INPV” results refer to the difference in industry value between the no-new-standards

case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new and amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and equipment designs into compliance with potential new and amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standards. The conversion costs can have a significant impact on the short-term cash flow on the industry and generally result in lower free cash flow in the period between the publication of the final rule and the compliance date of potential new and amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

¹⁰⁰ The gross margin percentage of 29 percent is based on a manufacturer markup of 1.40.

TABLE V.61—MANUFACTURER IMPACT ANALYSIS RESULTS

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
INPV	2022\$ Mil-lion.	3,286.4	3,274.2 to 3,290.8	3,241.9 to 3,279.6.	3,224.4 to 3,271.4.	3,182.5 to 3,269.6.	3,127.0 to 3,255.5.	2,985.9 to 3,529.9.
Change in INPV	2022\$ Mil-lion.	.....	(12.2) to 4.5	(44.4) to (6.7)	(61.9) to (15.0).	(103.8) to (16.7).	(159.3) to (30.9).	(300.4) to 243.6.
Free Cash Flow (2027)	% .....	.....	(0.4) to 0.1	(1.4) to (0.2) ..	(1.9) to (0.5) ..	(3.2) to (0.5) ..	(4.8) to (0.9) ..	(9.1) to 7.4.
Change in Free Cash Flow (2027).	2022\$ Mil-lion.	291.2	285.7	268.0	258.3	238.7	210.8	170.9.
Product Conversion Costs.	% .....	.....	(1.9)	(8.0)	(11.3)	(18.0)	(27.6)	(41.3).
Capital Conversion Costs.	2022\$ Mil-lion.	-	12.6	66.1	94.0	121.5	187.5	299.9.
Total Conversion Costs	2022\$ Mil-lion.	.....	2.7	2.2	3.1	26.0	38.9	43.9.
	2022\$ Mil-lion.	.....	15.3	68.3	97.1	147.5	226.4	343.8.

* Parentheses denote negative (-) values.

The following cash flow discussion refers to the equipment classes as detailed in table IV.1 in section IV.A of this document and the TSLs as detailed

in section V.A of this document. Table V.62 through table V.66 show the design options analyzed in the engineering analysis for each directly analyzed

equipment class by TSL. See section IV.C of this document and chapter 5 of the NOPR TSD for additional information on the engineering analysis.

TABLE V.62—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR VERTICAL, OPEN EQUIPMENT FAMILIES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
VOP.RC.M	Occupancy Sensors	Night Curtains; Occupancy Sensors.				
VOP.RC.L	Occupancy Sensors	Night Curtains; Occupancy Sensors.				
VOP.SC.M	Electronically Commutated ("EC") Cond. Fan Motor.	EC Cond. Fan Motor; Night Curtains	EC Cond. Fan Motor; Night Curtains; variable-speed compressors ("VSCs"); Occupancy Sensors.	EC Cond. Fan Motor; Night Curtains; VSC; Occupancy Sensors; Microchannel Condenser.		

TABLE V.63—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR VERTICAL, CLOSED EQUIPMENT FAMILIES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
VCT.RC.M	Occupancy Sensors		Occupancy Sensors; Triple Pane Door— Krypton Fill.	Occupancy Sensors	Occupancy Sensors; Triple Pane Door— Krypton Fill.	Occupancy Sensors; VIG Door.
VCT.RC.L	Occupancy Sen- sors.	Occupancy Sensors; Triple Pane Door—Krypton Fill.				Occupancy Sensors; VIG Door.
VCT.SC.H	Baseline.					EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Occu- pancy Sensors; Microchannel Con- denser; VIG Door.
VCT.SC.M	EC Cond. Fan Motor			EC Cond. Fan Motor; VSC; Occupancy Sen- sors.	EC Cond. Fan Motor; VSC; Occupancy Sensors; Micro- channel Con- denser; VIG Door.	

TABLE V.63—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR VERTICAL, CLOSED EQUIPMENT FAMILIES—Continued

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
VCT.SC.L	EC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor; Triple Pane Door—Krypton Fill.	EC Evap. Fan Motor; EC Cond. Fan Motor; Triple Pane Door—Krypton Fill; VSC; Occupancy Sensors.	EC Evap. Fan Motor; EC Cond. Fan Motor; Triple Pane Door—Krypton Fill; VSC; Occupancy Sensors; Microchannel Condenser.	EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Occupancy Sensors; Microchannel Condenser; VIG Door.	
VCT.SC.I	Triple Pane Door—Krypton Fill.	Triple Pane Door—Krypton Fill; Occupancy Sensors				Occupancy Sensors; Microchannel Condenser; VIG Door.
VCS.SC.H	Evap. Fan Control	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor.	Evap. Fan Control	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser.	
VCS.SC.M	Evap. Fan Control.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor.			Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser.
VCS.SC.L; VCS.SC.I.	Evap. Fan Control.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser..		

TABLE V.64—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR SEMI-VERTICAL, OPEN AND SERVICE OVER-COUNTER EQUIPMENT FAMILIES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
SVO.RC.M	Occupancy Sensors.		Occupancy Sensors; Night Curtains.	Occupancy Sensors.	Occupancy Sensors; Night Curtains.	
SVO.SC.M	EC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor; Night Curtains		EC Evap. Fan Motor; EC Cond. Fan Motor; Night Curtains; VSC; Occupancy Sensors.	EC Evap. Fan Motor; EC Cond. Fan Motor; Night Curtains; SC; Occupancy Sensors; Microchannel Condenser.	
SOC.RC.M	Occupancy Sensors		Occupancy Sensors; Triple Pane Door—Krypton Fill.	Occupancy Sensors.	Occupancy Sensors; Triple Pane Door—Krypton Fill.	Occupancy Sensors; VIG Door.
SOC.SC.M	Evap. Fan Control	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor		Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Occupancy Sensors.	Evap. Fan Control; EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Occupancy Sensors; Microchannel Condenser; VIG Door.	

TABLE V.65—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR HORIZONTAL EQUIPMENT FAMILIES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
HZO.RC.M; HZO.RC.L.	Occupancy Sensors.					
HZO.SC.M; HZO.SC.L.	EC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor		EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser; Occupancy Sensors..	
HCT.SC.M	Baseline					VSC; Occupancy Sensors; VIG Door.
HCT.SC.L	Baseline					VSC; Occupancy Sensors; Microchannel Condenser; VIG Door.
HCT.SC.I	VSC	Baseline		VSC	VSC; Occupancy Sensors.	VSC; Occupancy Sensors; Microchannel Condenser; VIG Door.
HCS.SC.M	Evap. Fan Control		Evap. Fan Control; EC Cond. Fan Motor.	Evap. Fan Control	Evap. Fan Control; EC Cond. Fan Motor.	Evap. Fan Control; EC Cond. Fan Motor; Microchannel Condenser; VSC.
HCS.SC.L	EC Cond. Fan Motor					EC Cond. Fan Motor; VSC; Microchannel Condenser.

TABLE V.66—DESIGN OPTIONS ANALYZED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVEL FOR CHEF BASE EQUIPMENT CLASSES

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
CB.SC.M	PSC Evap. Fan Motor.	EC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor.	EC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser.
CB.SC.L	PSC Evap. Fan Motor.	EC Evap. Fan Motor; EC Cond. Fan Motor		EC Evap. Fan Motor; EC Cond. Fan Motor; VSC.	EC Evap. Fan Motor; EC Cond. Fan Motor; VSC; Microchannel Condenser.	

At TSL 6, the standard represents the max-tech efficiencies for all equipment classes. The change in INPV is expected to range from –\$300.4 million to \$243.6 million, which represents a change in INPV of –9.1 percent to 7.4 percent, respectively. At this level, free cash flow is estimated to decrease by 41.3 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance would be required. In 2027, approximately 2.2

percent of covered CRE shipments are expected to meet the efficiencies required at TSL 6. See table V.67 for the percent of equipment class shipments that would meet or exceed the efficiencies required at each TSL in 2027.

The design options DOE analyzed at TSL 6 included the max-tech technologies for all equipment classes. For all open (*i.e.*, equipment classes without doors) and transparent door

equipment classes, DOE expects manufacturers would likely need to incorporate occupancy sensors with dimming capability. Open equipment classes would also likely require the use of night curtains. For equipment classes with transparent doors, DOE expects manufacturers would likely need to incorporate vacuum-insulated glass. For self-contained equipment classes, DOE expects manufacturers would need to incorporate EC evaporator and

condenser fan motors, variable-speed compressors, and microchannel condensers. For closed, self-contained equipment classes using forced-air refrigeration systems, DOE expects manufacturers would also need to incorporate evaporator fan control. Of the 28 directly analyzed equipment classes, 5 equipment classes (VCT.RC.M, VCT.SC.M, VCT.SC.L, VCS.SC.M, and VCS.SC.L) account for approximately 81.5 percent of industry shipments. For VCT.RC.M, TSL 6 corresponds to EL 4. For VCT.SC.M and VCT.SC.L, TSL 6 corresponds to EL 7. For VCS.SC.M, TSL 6 corresponds to EL 5. For VCS.SC.L, TSL 6 corresponds to EL 6. See section of this V.A of this document for more information on the efficiency levels analyzed at each TSL.

At max-tech, DOE expects that nearly all manufacturers would need to dedicate notable engineering resources to update equipment designs and source, qualify, and test high-efficiency components across their CRE portfolio. However, most design options analyzed involve more efficient components (*e.g.*, high-efficiency motors) and would not necessitate significant capital investment. Self-contained CRE equipment classes account for 87.1 percent of industry shipments in 2027 and DOE estimates 2.5 percent of self-contained CRE shipments would meet TSL 6 in 2027. Incorporating variable-speed compressors into self-contained CRE designs would likely require additional development and testing time to optimize for different CRE applications to realize maximum efficiency benefits. Capital conversion costs may be necessary for new tooling if additional modifications are required to accommodate a larger compressor system.

CRE equipment classes with transparent doors (*i.e.*, HCT.SC.I, HCT.SC.L, HCT.SC.M, SOC.RC.M, SOC.SC.M, VCT.RC.L, VCT.RC.M, VCT.SC.H, VCT.SC.I, VCT.SC.L, VCT.SC.M) account for approximately 43.8 percent of industry shipments in 2027. For the 71 OEMs that offer directly analyzed CRE with transparent doors, implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate durability of their doors in all commercial settings. Capital conversion costs may be necessary for new fixtures. In interviews, some manufacturers raised concerns about standards requiring a widespread adoption of vacuum-insulated glass as it is still a relatively untested technology in the commercial refrigeration market. There is very little industry experience with implementing vacuum-insulated

glass in CRE applications and DOE estimates that approximately 1.7 percent of CRE equipment classes with transparent doors would meet the max-tech efficiencies in 2027. Manufacturers expressed concerns that the 3-year conversion period between the publication of the final rule and the compliance date of the new and amended energy conservation standards might be insufficient to design and test a full portfolio of CRE with vacuum-insulated glass doors that meet the max-tech efficiencies and maintain their internal performance metrics for durability and safety over the equipment lifetime. DOE estimates capital conversion costs of \$43.9 million and product conversion costs of \$299.9 million. Conversion costs total \$343.8 million.

At TSL 6, the shipment-weighted average MPC for all CRE is expected to increase by 25.0 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the projected increase in production costs, DOE expects an estimated 2.9 percent drop in shipments in the year the standard takes effect relative to the no-new-standards case. In the preservation of gross margin percentage scenario, the large increase in cashflow from the higher MSP outweighs the \$343.8 million in conversion costs, causing an increase in INPV at TSL 6 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$343.8 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 6 under the preservation of operating profit scenario. See section IV.J.2.d of this document for further details on the manufacturer markup scenarios.

At TSL 5, the standard represents the highest efficiency level with positive LCC savings for all equipment classes. The change in INPV is expected to range from $-\$159.3$ million to $-\$30.9$ million, which represents a change in INPV of -4.8 percent to -0.9 percent, respectively. At this level, free cash flow is estimated to decrease by 27.6 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance is required. In 2027, approximately 10.8 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 5.

The design options DOE analyzed at TSL 5 are similar to the design options analyzed at TSL 6 except most equipment classes with transparent doors would not need to incorporate vacuum-insulated glass doors. All VCT equipment classes would likely need to incorporate triple pane glass with krypton fill except for VCT.SC.H and VCT.SC.M (together accounting for 26.4 percent of industry shipments), which would likely not require improved door designs. DOE expects that HCT equipment classes would not need to incorporate additional panes of glass to meet TSL 5 levels. At this level, DOE also expects that fewer self-contained equipment classes would need to incorporate microchannel condensers. Additionally, manufacturers of HCS equipment classes may not need to incorporate variable-speed compressors to meet the efficiencies required. For the five highest-volume equipment classes, TSL 5 corresponds to lower efficiency levels for four equipment classes: VCT.RC.M, VCT.SC.M, VCT.SC.L, and VCS.SC.M. For VCT.RC.M and VCT.SC.M, TSL 5 corresponds to EL 3. For VCT.SC.M, TSL 5 corresponds to EL 5. For VCT.SC.L, TSL 5 corresponds to EL 6. For VCS.SC.M, TSL 5 corresponds to EL 4. For VCS.SC.M and VCS.SC.L, the efficiencies required at TSL 5 are the same as TSL 6. At this level, the VCT.RC.M and VCT.SC.L equipment classes would both need to incorporate triple pane glass with krypton fill. Out of the four highest volume self-contained classes, only VCT.SC.L and VCS.SC.L would require the use of microchannel condensers.

Similar to TSL 6, DOE expects manufacturers would spend development time updating equipment designs to incorporate high-efficiency components. However, at this level, DOE expects that most manufacturers of CRE with transparent doors could meet the TSL 5 efficiencies without implementing vacuum-insulated glass doors. Of the 11 directly analyzed transparent door equipment classes, only SOC.SC.M would likely require the use of vacuum-insulated glass doors to meet the efficiencies required. SOC.SC.M accounts for approximately 0.4 percent of analyzed industry shipments in 2027. DOE estimates capital conversion costs of \$38.9 million and product conversion costs of \$187.5 million. Conversion costs total \$226.4 million.

At TSL 5, the shipment-weighted average MPC for all CRE is expected to increase by 6.0 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the projected increase in

production costs, DOE expects an estimated 0.7 percent drop in shipments in the year the standard takes effect relative to the no-new-standards case. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the \$226.4 million in conversion costs, causing a slight decrease in INPV at TSL 5 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$226.4 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5 under the preservation of operating profit scenario.

At TSL 4, the standard represents the highest efficiency level with maximum LCC savings for all equipment classes. The change in INPV is expected to range from -\$103.8 million to -\$16.7 million, which represents a change in INPV of -3.2 percent to -0.5 percent, respectively. At this level, free cash flow is estimated to decrease by 18.0 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance is required. In 2027, approximately 15.7 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 4.

At TSL 4, the efficiency levels required for most equipment classes are lower than the efficiency levels required at TSL 5, including for the five highest-volume equipment classes. At this level, no self-contained equipment classes are expected to require the use of microchannel condensers. At TSL 4, none of the highest-volume self-contained equipment classes (VCT.SC.M, VCT.SC.L, VCS.SC.M, VCS.SC.L) would need to incorporate microchannel condensers. Additionally, DOE does not expect VCS.SC.M would require the use of variable-speed compressors to meet TSL 5 efficiencies. For VCT.RC.M and VCT.SC.M, DOE expects manufacturers would not need to implement additional panes of glass to meet the efficiencies required. For VCT.RC.M, TSL 4 corresponds to EL 1. For VCT.SC.M, TSL 4 corresponds to EL 3. For VCT.SC.L, TSL 4 corresponds to EL 5. For VCS.SC.M, TSL 4 corresponds to EL 3. For VCS.SC.L, TSL 4 corresponds to EL 5. At this level, product conversion costs may be necessary to source, qualify, and test high-efficiency components but to a

lesser extent than higher TSLs. Some manufacturers of self-contained equipment classes may need to invest in new tooling if incorporating variable-speed compressors require additional modifications to CRE designs. Some manufacturers of transparent door equipment classes may need to invest in new fixtures to accommodate additional panes of glass into CRE designs. DOE estimates capital conversion costs of \$26.0 million and product conversion costs of \$121.5 million. Conversion costs total \$147.5 million.

At TSL 4, the shipment-weighted average MPC for all CRE is expected to increase by 4.1 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the projected increase in production costs, DOE expects an estimated 0.4 percent drop in shipments in the year the standard takes effect relative to the no-new-standards case. In the preservation-of-gross-margin-percentage scenario, the increase in cashflow from the higher MSP is slightly outweighed by the \$147.5 million in conversion costs, causing a small decrease in INPV at TSL 4 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$147.5 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit scenario.

At TSL 3, the standard represents the highest efficiency level with positive LCC savings and the incorporation of single speed compressors for all equipment classes in which this design option was considered. The change in INPV is expected to range from -\$61.9 million to -\$15.0 million, which represents a change in INPV of -1.9 percent to -0.5 percent, respectively. At this level, free cash flow is estimated to decrease by 11.3 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance is required. In 2027, approximately 28.8 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 3.

At TSL 3, the efficiency levels required for many equipment classes are lower than the efficiency levels required at TSL 4. However, the efficiency levels required for some equipment classes are the same or are higher (*i.e.*, more

stringent) than the TSL 4 efficiencies. At this level, DOE expects that none of the self-contained equipment classes would require the use of variable-speed compressor systems. DOE also expects that fewer equipment classes with transparent doors would need to incorporate additional panes of glass to meet TSL 3. For the five highest-volume equipment classes, the efficiency levels required at TSL 3, as compared to TSL 4, are lower for VCT.SC.M, VCT.SC.L, and VCS.SC.L; higher for VCT.RC.M; and the same for VCT.SC.M. For VCT.RC.M, TSL 3 corresponds to EL 3. For VCT.SC.M, TSL 3 corresponds to EL 1. For VCT.SC.L, TSL 3 corresponds to EL 3. For VCS.SC.L, TSL 3 corresponds to EL 4. At this level, DOE expects industry would incur minimal capital conversion costs. Product conversion costs may be necessary to source, qualify, and test high-efficiency components but to a lesser extent than higher TSLs. DOE estimates capital conversion costs of \$3.1 million and product conversion costs of \$94.0 million. Conversion costs total \$97.1 million.

At TSL 3, the shipment-weighted average MPC for all CRE is expected to increase by 2.2 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation-of-gross-margin-percentage scenario, the minor increase in cashflow from the higher MSP is slightly outweighed by the \$97.1 million in conversion costs, causing a small decrease in INPV at TSL 3 under this scenario. Under the preservation-of-operating-profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$97.1 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 3 under the preservation-of-operating-profit scenario.

At TSL 2, the standard represents the highest efficiency level with maximum LCC savings and the incorporation of single speed compressors for all equipment classes in which this design option was considered. The change in INPV is expected to range from -\$44.4 million to -\$6.7 million, which represents a change in INPV of -1.4 percent to -0.2 percent, respectively.

At this level, free cash flow is estimated to decrease by 8.0 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance is required. In 2027, approximately 29.9 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 2.

At this level, the efficiency levels required for most equipment classes are the same as TSL 3. For the five highest-volume equipment classes, TSL 2 corresponds to lower efficiency levels for one equipment class: VCT.RC.M. DOE expects manufacturers would likely need to implement occupancy sensors into VCT.RC.M designs. For VCT.SC.M, VCT.SC.L, VCS.SC.M, and VCS.SC.L, the efficiencies at TSL 2 are the same as TSL 3. At this level, DOE expects industry would incur minimal capital conversion costs. The lower efficiency levels required for two equipment classes—VCT.RC.M and SOC.RC.M—drive the drop in product conversion costs at this level. For VCT.RC.M and SOC.RC.M, DOE expects manufacturers could meet TSL 2 efficiencies by incorporating occupancy sensors, which requires minimal development effort. DOE estimates capital conversion costs of \$2.2 million and product conversion costs of \$66.1 million. Conversion costs total \$68.3 million.

At TSL 2, the shipment-weighted average MPC for all CRE is expected to increase by 1.7 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the minor increase in cashflow from the higher MSP is slightly outweighed by the \$68.3 million in conversion costs, causing a minor decrease in INPV at TSL 2 under this

scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$68.3 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 1, the standard represents the minimum efficiency level with positive LCC savings. The change in INPV is expected to range from –\$12.2 million to \$4.5 million, which represents a change in INPV of –0.4 percent to 0.1 percent, respectively. At this level, free cash flow is estimated to decrease by 1.9 percent compared to the no-new-standards case value of \$291.2 million in the year 2027, the year before compliance is required. In 2027, approximately 35.6 percent of covered CRE shipments are expected to meet the efficiencies required at TSL 1.

At this level, the efficiency levels correspond to EL 1 for nearly all equipment classes (except for VCT.SC.H, HCT.SC.M, and HCT.SC.L, which are set to baseline or EL 0). DOE expects most self-contained equipment classes would need to incorporate higher-efficiency fan motors (*i.e.*, EC evaporator or condenser fan motors or PSC evaporator fan motors for chef bases). Other self-contained equipment classes may need to incorporate evaporator fan controls in lieu of higher-efficiency motors. DOE expects that HCT.SC.L and HCT.SC.I may require the use of variable-speed compressors to meet TSL 1 efficiencies. At this level, DOE expects that manufacturers of VCT.SC.I may need to incorporate an additional pane of glass. Remote-

controlled equipment classes would likely need to incorporate occupancy sensors. Capital conversion costs are driven by tooling costs associated with incorporating variable-speed compressors into HCT.SC.L and HCT.SC.I designs. Product conversion costs are driven by incorporating high-efficiency components into CRE designs. DOE estimates capital conversion costs of \$2.7 million and product conversion costs of \$12.6 million. Conversion costs total \$15.3 million.

At TSL 1, the shipment-weighted average MPC for all CRE is expected to increase by 0.8 percent relative to the no-new-standards case shipment-weighted average MPC for all CRE in 2028. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the minor increase in cashflow from the higher MSP slightly outweighs the \$15.3 million in conversion costs, causing a minor increase in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the analyzed compliance year. This reduction in the manufacturer markup and the \$15.3 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

TABLE V.67—PERCENTAGES OF 2027 NO-NEW-STANDARDS CASE SHIPMENTS THAT MEET EACH TSL BY EQUIPMENT CLASS

Directly analyzed equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)	TSL 6 (%)
CB.SC.L	30.0	0.0	0.0	0.0	0.0	0.0
CB.SC.M	50.0	10.0	0.0	10.0	0.0	0.0
HCS.SC.L	12.4	12.4	12.4	12.4	12.4	0.0
HCS.SC.M	12.4	12.4	0.0	12.4	0.0	0.0
HCT.SC.I	28.3	100.0	100.0	28.3	22.3	8.9
HCT.SC.L	100.0	100.0	100.0	100.0	100.0	8.9
HCT.SC.M	100.0	100.0	100.0	100.0	100.0	8.9
HZO.RC.L	0.0	0.0	0.0	0.0	0.0	0.0
HZO.RC.M	0.0	0.0	0.0	0.0	0.0	0.0
HZO.SC.L	18.9	15.2	15.2	0.0	0.0	0.0
HZO.SC.M	18.9	15.2	15.2	0.0	0.0	0.0
SOC.RC.M	1.6	1.6	0.2	1.6	0.2	0.0
SOC.SC.M	63.7	47.2	47.2	26.7	24.8	24.8
SVO.RC.M	23.8	23.8	0.0	23.8	0.0	0.0

TABLE V.67—PERCENTAGES OF 2027 NO-NEW-STANDARDS CASE SHIPMENTS THAT MEET EACH TSL BY EQUIPMENT CLASS—Continued

Directly analyzed equipment class	TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)	TSL 5 (%)	TSL 6 (%)
SVO.SC.M	34.0	21.5	21.5	11.4	10.5	10.5
VCS.SC.H	30.0	30.0	0.0	30.0	0.0	0.0
VCS.SC.I	0.0	0.0	0.0	0.0	0.0	0.0
VCS.SC.L	23.0	14.0	14.0	0.0	0.0	0.0
VCS.SC.M	29.0	19.0	19.0	19.0	8.0	5.0
VCT.RC.L	7.0	6.0	6.0	6.0	6.0	0.4
VCT.RC.M	7.0	7.0	0.4	7.0	0.4	0.0
VCT.SC.H	100.0	100.0	100.0	100.0	100.0	3.0
VCT.SC.I	55.8	36.5	36.5	36.5	36.5	0.0
VCT.SC.L	65.0	60.0	60.0	10.0	10.0	0.0
VCT.SC.M	52.0	52.0	52.0	18.0	18.0	0.0
VOP.RC.L	26.9	0.0	0.0	0.0	0.0	0.0
VOP.RC.M	26.9	0.0	0.0	0.0	0.0	0.0
VOP.SC.M	14.0	9.0	9.0	5.0	5.0	5.0
Overall Industry	35.6	29.9	28.8	15.7	10.8	2.2

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new and amended energy conservation standards on direct employment in the CRE industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the 2021 *ASM*,¹⁰¹ BLS employee compensation data,¹⁰² results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to equipment manufacturing depend on the labor intensity of the equipment, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs: Production Workers Annual Wages, Production Workers

Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

Total production employees was then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered equipment. This value is derived from manufacturer interviews, equipment database analysis, DOE's shipments analysis, and publicly available information. DOE estimates that approximately 77 percent of currently covered CRE are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling equipment within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also

included as production labor.¹⁰³ DOE's estimates only account for production workers who manufacture the specific equipment covered by this proposed rule.

Non-production workers account for the remainder of the direct employment figure. The non-production employees category covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, management, *etc.*¹⁰⁴ Using the number of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 7,472 domestic workers for CRE in 2028. Table V.68 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the CRE industry. The discussion below provides a qualitative evaluation of the range of potential impacts presented in the table.

TABLE V.68—DIRECT EMPLOYMENT IMPACTS FOR DOMESTIC CRE MANUFACTURERS IN 2028 *

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Direct Employment in 2028 (Production Workers + Non-Production Workers).	7,472	7,475	7,467	7,464	7,429	7,393	7,234.

¹⁰¹ U.S. Census Bureau, *Annual Survey of Manufactures*. "Summary Statistics for Industry Groups and Industries in the U.S (2021)." Available at www.census.gov/data/tables/time-series/econ/asm/2018-2021-asm.html (last accessed January 20, 2023).

¹⁰² U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation*. December 15, 2022. Available at www.bls.gov/news.release/pdf/eccec.pdf (last accessed January 20, 2023).

¹⁰³ U.S. Census Bureau, "Definitions and Instructions for the Annual Survey of Manufactures,

MA-10000." Available at www2.census.gov/programs-surveys/asm/technical-documentation/questionnaire/2021/instructions/MA_10000_instructions.pdf (last accessed January 25, 2023).

¹⁰⁴ *Id.*

TABLE V.68—DIRECT EMPLOYMENT IMPACTS FOR DOMESTIC CRE MANUFACTURERS IN 2028 *—Continued

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Potential Changes in Direct Employment in 2028*.		(5,484) to 3	(5,484) to (5)	(5,484) to (8)	(5,484) to (43) ..	(5,484) to (79) ..	(5,484) to (238).

* DOE presents a range of potential employee impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts in table V.68 represent the potential domestic employment changes that could result following the compliance date for CRE in this proposal. The upper bound estimate corresponds to a potential change in the number of domestic workers that would result from new and amended energy conservation standards if manufacturers continue to produce the same scope of covered equipment within the United States after compliance takes effect.

To establish a conservative lower bound, DOE assumes all manufacturers would shift production to foreign countries with lower labor costs. Most of the design options analyzed in the engineering analysis require manufacturers to purchase more-efficient components from suppliers. These components do not require significant additional labor to assemble or significant production line updates. Incorporating vacuum-insulated panels could lead to greater labor requirements, however, as discussed in section IV.B.1 of this document, DOE did not consider vacuum-insulated panels as a design option in its engineering analysis. As a result, DOE believes the likelihood of changes in production location due to new and amended standards are relatively low.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

In interviews, most manufacturers noted potential manufacturing capacity concerns relating to widespread adoption of increased insulation thickness or VIPs. As discussed in section IV.B.1 of this document, DOE excluded these technologies from further consideration in the engineering analysis and, thus, DOE does not expect manufacturers would need to increase insulation thickness or incorporate VIPs to meet any of the efficiency levels

analyzed in this NOPR. Therefore, when considering potential new and amended energy conservation standards in isolation, DOE believes manufacturers would be able to maintain manufacturing capacity levels and continue to meet market demand under the proposed new and amended energy conservation standards. However, multiple manufacturers raised concerns about technical and laboratory resource constraints due to overlapping regulations over a short time period. Specifically, these manufacturers mentioned the testing and redesign required for new safety standards and the various regulations necessitating the transition to low-GWP refrigerants. Some manufacturers stated that there are already experiencing testing laboratory shortages, which would further be exacerbated should EPA finalize its proposals in the December 2022 EPA NOPR and DOE set more stringent standards that necessitate the redesign of the majority of basic models. Manufacturers noted that the ongoing supply chain constraints further strain technical and laboratory resources as manufacturers are forced to identify and qualify new component suppliers due to shortages and long lead times.

DOE seeks comment on whether manufacturers expect that manufacturing capacity constraints, engineering resource constraints, or laboratory constraints would limit equipment availability to consumers in the timeframe of the new and amended standards compliance date (2028).

d. Impacts on Subgroups of Manufacturers

Small business, low volume, and niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. As discussed in section IV.J of this document, using average cost assumptions to develop an industry cash flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For CRE, DOE identified and evaluated the impact of new and amended conservation standards on one

subgroup: small manufacturers. The SBA defines a “small business” as having 1,250 employees or less for NAICS 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,” which includes CRE manufacturing. Based on this definition, DOE identified 25 domestic OEM in the CRE industry that qualify as a “small business.”

For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this document or chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the equipment/product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers’ financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. DOE evaluates equipment/product-specific regulations that will take effect approximately three years before or after the estimated 2028 compliance date of any new and amended energy conservation standards for CRE. This information is presented in table V.69.

TABLE V.69—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING COMMERCIAL REFRIGERATION EQUIPMENT OEMS

Federal energy conservation standard	Number of OEMs*	Number of OEMs affected by this rulemaking**	Approx. standards compliance year	Industry conversion costs (Millions \$)	Industry conversion costs/equipment revenue*** (%)
Consumer Furnaces† 87 FR 40590 (July 7, 2022)	15	2	2029	\$150.6 (2020\$)	1.4
Consumer Clothes Dryers † 87 FR 51734 (August 23, 2022)	15	3	2027	149.7 (2020\$)	1.8
Consumer Conventional Cooking Products 88 FR 6818† (February 1, 2023)	34	4	2027	183.4 (2021\$)	1.2
Refrigerators, Freezers, and Refrigerator-Freezers † 88 FR 12452	49	8	2027	1,323.6 (2021\$)	3.8
(February 27, 2023)	19	3	2027	690.8 (2021\$)	5.2
Residential Clothes Washers† 88 FR 13520 (March 3, 2023)	8	1	2026	24.8 (2021\$)	0.4
Room Air Conditioners 88 FR 34298 (May 26, 2023)	38	6	2029	126.9 (2021\$)	3.1
Miscellaneous Refrigeration Products† 88 FR 19382 (March 31, 2023)	22	5	2027	125.6 (2021\$)	2.1
Dishwashers† 88 FR 32514 (May 19, 2023)	23	7	2027	15.9 (2022\$)	0.6
Automatic Commercial Ice Makers† 88 FR 30508 (May 11, 2023)	5	2	2027	1.5 (2022\$)	0.7
Refrigerated Bottled or Canned Beverage Vending Machines† 88 FR 33968	18	3	2026	46.1 (2021\$)	0.7
May 25, 2023)	79	5	2027	89.0 (2022\$)	0.8
Microwave Ovens 88 FR 39912 (June 20, 2023)					
Walk-in Coolers and Freezers† 88 FR 60746 (September 5, 2023)					

* This column presents the total number of OEMs identified in the energy conservation standard rule that is contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing CRE that are also listed as OEMs in the identified energy conservation standard that is contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of equipment revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† These rulemakings are at the NOPR stage, and all values are subject to change until finalized through publication of a final rule.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of CRE associated with multiple DOE standards or equipment/product-specific regulatory actions of other Federal agencies.

Refrigerant Regulations

The December 2022 EPA NOPR ¹⁰⁵ rulemaking proposes to restrict the use of HFCs in specific sectors or subsectors, including use in certain CRE covered by this rulemaking. DOE is considering the impacts of change in refrigerants in its analysis. DOE understands that switching from non-flammable to flammable refrigerants (e.g., R-290) requires time and investment to redesign CRE models and upgrade production facilities to accommodate the additional structural and safety precautions required. As discussed in section IV.C.1 of this document, DOE expects CRE

manufacturers will transition most models to R-290 to comply with anticipated refrigeration regulations, such as the December 2022 EPA NOPR, prior to the expected 2028 compliance date of any potential energy conservation standards. Therefore, the engineering analysis assumes the use of R-290 compressors as a baseline design option for select equipment classes. See section IV.C.1 of this document for additional information on refrigerant assumptions in the engineering analysis.

DOE accounted for the costs associated with redesigning CRE to make use of flammable refrigerants and retrofitting production facilities to accommodate flammable refrigerants in the GRIM. DOE considers the expenses associated with the refrigerant transition as independent of DOE actions related to any new and amended energy conservation standards. Therefore, DOE incorporated the refrigerant transition expenses into both the no-new-standards case and standards cases. DOE relied on manufacturer feedback in confidential interviews, a report

prepared for EPA,¹⁰⁶ results of the engineering analysis, and investment estimates submitted by NAMA and AHRI in response to the June 2022 Preliminary Analysis to estimate the industry refrigerant transition costs. Based on feedback, DOE assumed that the transition to low-GWP refrigerants would require industry to invest approximately \$21.3 million in R&D and \$33.3 million in capital expenditures (e.g., investments in new charging equipment, leak detection systems, etc.).

DOE requests comments on the magnitude of costs associated with transitioning CRE designs and production facilities to accommodate low-GWP refrigerants that would be incurred between the publication of this NOPR and the proposed compliance date of new and amended standards. Quantification and categorization of

¹⁰⁵ The proposed rule was published on December 15, 2022. 87 FR 76738.

¹⁰⁶ See pp. 5–113 of the “Global Non-CO2 Greenhouse Gas Emission Projections & Marginal Abatement Cost Analysis: Methodology Documentation” (2019). Available at www.epa.gov/sites/default/files/2019-09/documents/nonco2_methodology_report.pdf.

these costs, such as engineering efforts, testing lab time, certification costs, and capital investments (e.g., new charging equipment), would enable DOE to refine its analysis.

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 new and amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential new and amended standards for CRE, 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 equipment purchased in the 30-year period that begins in the year of anticipated compliance with new and amended standards (2028–2057). Table V.70 presents DOE's projections of the national energy savings for each TSL considered for CRE. The savings were calculated using the approach described in section IV.E of this document.

TABLE V.70—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CRE; 30 YEARS OF SHIPMENTS (2028–2057)

	Trial standard level					
	1	2	3	4	5	6
	(quads)					
Primary energy	1.00	1.70	1.79	2.70	3.02	3.29
FFC energy	1.03	1.75	1.83	2.78	3.11	3.38

OMB Circular A–4¹⁰⁷ requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of

equipment 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.¹⁰⁸ The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to CRE. 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.71. The impacts are counted over the lifetime of CRE purchased in 2028–2036.

TABLE V.71—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CRE; 9 YEARS OF SHIPMENTS (2028–2036)

	Trial standard level					
	1	2	3	4	5	6
	(quads)					
Primary energy	0.28	0.48	0.51	0.77	0.86	0.93
FFC energy	0.29	0.50	0.52	0.79	0.88	0.96

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 CRE. In accordance with OMB's guidelines on regulatory analysis,¹⁰⁹ DOE calculated NPV using both a 7-percent and a 3-percent real

discount rate. Table V.72 shows the consumer NPV results with impacts counted over the lifetime of equipment purchased in 2028–2057.

¹⁰⁷ 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 February 17, 2023).

¹⁰⁸ EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except

that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6316(e)(1)); 42 U.S.C. 6295(m)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the

variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

¹⁰⁹ 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 February 17, 2023).

TABLE V.72—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CRE; 30 YEARS OF SHIPMENTS (2028–2057)

Discount rate	Trial standard level					
	1	2	3	4	5	6
	(billion [2022\$])					
3 percent	4.39	6.01	5.87	8.59	7.10	– 16.5
7 percent	1.80	2.38	2.27	3.24	2.38	– 10.1

The NPV results based on the aforementioned 9-year analytical period are presented in 2022\$ table V.73. The impacts are counted over the lifetime of

equipment purchased in 2028–2036. 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.

TABL—V.73—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CRE; 9 YEARS OF SHIPMENTS (2028–2036)

Discount rate	Trial standard level					
	1	2	3	4	5	6
	(billion [2022\$])					
3 percent	1.68	2.30	2.25	3.16	2.50	– 6.42
7 percent	0.92	1.21	1.16	1.58	1.09	– 5.21

The previous results reflect the use of a default trend to estimate the change in price for CRE over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE estimates that that new and amended energy conservation standards for CRE would reduce energy expenditures for consumers of those equipment, 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 (2028–

2032), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

As discussed in section IV.C.1.b of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the CRE under consideration in this rulemaking. Manufacturers of these equipment currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new and amended standards. As discussed in section III.F.1 of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such

impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rulemaking.

Energy conservation resulting from potential energy conservation standards for CRE is expected to yield

environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.74 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.L.1 of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.74—CUMULATIVE EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

	Trial Standard Level					
	1	2	3	4	5	6
Power Sector and Site Emissions						
CO ₂ (million metric tons)	16.7	28.5	29.9	45.3	50.7	55.1
CH ₄ (thousand tons)	1.24	2.11	2.21	3.35	3.75	4.08
N ₂ O (thousand tons)	0.17	0.29	0.31	0.47	0.52	0.57
NO _x (thousand tons)	7.89	13.4	14.1	21.3	23.9	26.0
SO ₂ (thousand tons)	5.53	9.43	9.89	15.0	16.8	18.2
Hg (tons)	0.04	0.07	0.07	0.10	0.12	0.13
Upstream Emissions						
CO ₂ (million metric tons)	1.70	2.90	3.04	4.61	5.15	5.61
CH ₄ (thousand tons)	155	263	277	419	468	509
N ₂ O (thousand tons)	0.01	0.01	0.01	0.02	0.02	0.03
NO _x (thousand tons)	26.5	45.2	47.4	71.8	80.3	87.4
SO ₂ (thousand tons)	0.10	0.17	0.18	0.28	0.31	0.34
Hg (tons)	0.00	0.00	0.00	0.00	0.00	0.00
FFC Emissions						
CO ₂ (million metric tons)	18.4	31.4	33.0	49.9	55.8	60.7
CH ₄ (thousand tons)	156	266	279	422	472	514
N ₂ O (thousand tons)	0.18	0.31	0.32	0.49	0.54	0.59
NO _x (thousand tons)	34.4	58.6	61.5	93.1	104	113
SO ₂ (thousand tons)	5.64	9.60	10.1	15.3	17.1	18.6
Hg (tons)	0.04	0.07	0.07	0.10	0.12	0.13

As part of the analysis for this rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO₂ that DOE estimated for each of the considered

TSLs for CRE. Section IV.L of this document discusses the SC–CO₂ values that DOE used. Table V.75 presents the value of CO₂ emissions reduction at each TSL for each of the SC–CO₂ cases.

The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.75—PRESENT VALUE OF CO₂ EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

TSL	SC–CO ₂ Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(million 2022\$)			
1	183	788	1,233	2,391
2	312	1,342	2,101	4,074
3	327	1,408	2,205	4,276
4	495	2,132	3,337	6,472
5	554	2,384	3,733	7,239
6	602	2,593	4,060	7,872

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N₂O that DOE estimated for each of the considered TSLs for CRE. Table V.76

presents the value of the CH₄ emissions reduction at each TSL, and table V.77 presents the value of the N₂O emissions reduction at each TSL. The time-series of annual values is presented for the

proposed TSL in chapter 14 of the NOPR TSD.

The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.76—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

TSL	SC-CH ₄ Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Million 2022\$)			
1	70.7	213	297	562
2	120	362	506	958
3	126	380	532	1005
4	191	576	805	1522
5	214	644	900	1702
6	233	700	979	1852

TABLE V.77—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

TSL	SC-N ₂ O Case			
	Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(Million 2022\$)			
1	0.69	2.74	4.25	7.30
2	1.17	4.67	7.23	12.4
3	1.23	4.90	7.59	13.0
4	1.85	7.42	11.5	19.8
5	2.07	8.29	12.9	22.1
6	2.25	9.02	14.0	24.0

DOE is well aware that scientific and economic knowledge about the contribution of CO₂ and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO₂ and other GHG emissions. This ongoing review will consider the comments on

this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_x and SO₂ emissions reductions anticipated to result from the considered TSLs for CRE. The dollar-per-ton values that DOE used are

discussed in section IV.L of this document. Table V.78 shows the present value for NO_x emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and table V.79 presents similar results for SO₂ emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.78—PRESENT VALUE OF NO_x EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

TSL	3% Discount rate	7% Discount rate
	million [2022\$]	
1	1,597	623
2	2,721	1,061
3	2,855	1,114
4	4,322	1,686
5	4,834	1,885
6	5,257	2,048

TABLE V.79—PRESENT VALUE OF SO₂ EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057

TSL	3% Discount rate	7% Discount rate
	million [2022\$]	
1	145	366
2	247	624

TABLE V.79—PRESENT VALUE OF SO₂ EMISSIONS REDUCTION FOR CRE SHIPPED IN 2028–2057—Continued

	TSL	3% Discount rate	7% Discount rate
3		260	655
4		393	992
5		439	1109
6		478	1206

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_x, and SO₂ 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. 6316(e)(1); 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.80 presents the NPV values that result from adding the estimates of the potential economic benefits

resulting from reduced GHG and NO_x and SO₂ 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 equipment, and are measured for the lifetime of equipment shipped in 2028–2057. 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 CRE shipped in 2028–2057.

TABLE V.80—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2022\$)						
5% Average SC–GHG case	6.6	9.8	9.8	14.6	13.8	–9.2
3% Average SC–GHG case	7.4	11.1	11.2	16.6	16.1	–6.7
2.5% Average SC–GHG case	7.9	12.0	12.1	18.1	17.7	–5.0
3% 95th percentile SC–GHG case	9.3	14.4	14.7	21.9	22.0	–0.3
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2022\$)						
5% Average SC–GHG case	2.8	4.1	4.1	6.0	5.5	–6.7
3% Average SC–GHG case	3.6	5.4	5.4	8.0	7.7	–4.2
2.5% Average SC–GHG case	4.1	6.3	6.4	9.5	9.4	–2.5
3% 95th percentile SC–GHG case	5.5	8.7	8.9	13.3	13.7	2.2

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment 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. 6316(e)(1); 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. 6316(e)(1); 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. 6316(e)(1); 42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of new and amended standards for CRE 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.

1. Benefits and Burdens of TSLs Considered for CRE Standards

Table V.81 and table V.82 summarize the quantitative impacts estimated for

each TSL for CRE. The national impacts are measured over the lifetime of CRE purchased in the 30-year period that begins in the anticipated year of compliance with new and amended standards (2028–2057). The energy

savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.81—SUMMARY OF ANALYTICAL RESULTS FOR CRE TSLs: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings						
Quads	1.03	1.75	1.83	2.78	3.11	3.38
Cumulative FFC Emissions Reduction						
CO ₂ (million metric tons)	18.4	31.4	33.0	49.9	55.8	60.7
CH ₄ (thousand tons)	156	266	279	422	472	514
N ₂ O (thousand tons)	0.18	0.31	0.32	0.49	0.54	0.59
NO _x (thousand tons)	34.4	58.6	61.5	93.1	104	113
SO ₂ (thousand tons)	5.64	9.60	10.1	15.3	17.1	18.6
Hg (tons)	0.04	0.07	0.07	0.10	0.12	0.13
Present Value of Benefits and Costs (3% discount rate, billion 2022\$)						
Consumer Operating Cost Savings	5.28	8.03	8.38	12.6	12.8	11.2
Climate Benefits*	1.00	1.71	1.79	2.71	3.04	3.30
Health Benefits**	1.96	3.34	3.51	5.31	5.94	6.46
Total Benefits†	8.25	13.1	13.7	20.7	21.8	21.0
Consumer Incremental Equipment Costs‡	0.89	2.02	2.51	4.05	5.74	27.7
Consumer Net Benefits	4.39	6.01	5.87	8.59	7.10	– 16.5
Total Net Benefits	7.36	11.1	11.2	16.6	16.1	– 6.72
Present Value of Benefits and Costs (7% discount rate, billion 2022\$)						
Consumer Operating Cost Savings	2.28	3.47	3.62	5.46	5.55	4.84
Climate Benefits*	1.00	1.71	1.79	2.71	3.04	3.30
Health Benefits**	0.77	1.31	1.37	2.08	2.32	2.53
Total Benefits†	4.05	6.49	6.79	10.3	10.9	10.7
Consumer Incremental Equipment Costs‡	0.48	1.08	1.35	2.22	3.17	14.9
Consumer Net Benefits	1.80	2.38	2.27	3.24	2.38	– 10.1
Total Net Benefits	3.58	5.40	5.44	8.03	7.74	– 4.24

Note: This table presents the costs and benefits associated with CRE shipped in 2028–2057. These results include benefits to consumers which accrue after 2057 from the equipment shipped in 2028–2057.

* Climate benefits are calculated using four different estimates of the SC–CO₂, SC–CH₄ and SC–N₂O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for NO_x and SO₂) 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.82—SUMMARY OF ANALYTICAL RESULTS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*	TSL 5*	TSL 6*
Manufacturer Impacts						
Industry NPV (million 2022\$) (No-new-standards case INPV = 3,286.4)	3,274.2 to 3,290.8	3,241.9 to 3,279.6	3,224.4 to 3,271.4	3,182.5 to 3,269.6	3,127.0 to 3,255.5	2,985.9 to 3,529.9
Industry NPV (% change)	(0.4) to 0.1	(1.4) to (0.2)	(1.9) to (0.5)	(3.2) to (0.5)	(4.8) to (0.9)	(9.1) to 7.4

TABLE V.82—SUMMARY OF ANALYTICAL RESULTS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *	TSL 5 *	TSL 6 *
Consumer Average LCC Savings (2022\$)						
CB.SC.L	\$263.1	\$263.1	\$553.2	\$672.5	\$566.9	\$566.9
CB.SC.M	111.3	111.3	199.3	208.7	44.9	– 74.3
HCS.SC.L	7.8	7.8	7.8	7.8	7.8	– 147.3
HCS.SC.M	94.1	94.1	84.9	94.1	84.9	– 189.1
HCT.SC.I	93.8	NA	NA	93.8	55.0	– 306.5
HCT.SC.L	NA	NA	NA	NA	NA	– 421.6
HCT.SC.M	NA	NA	NA	NA	NA	– 551.4
HZO.RC.L	46.6	46.6	46.6	46.6	46.6	46.6
HZO.RC.M	40.3	40.3	40.3	40.3	40.3	40.3
HZO.SC.L	160.9	193.6	193.6	971.2	841.9	841.9
HZO.SC.M	95.0	117.4	117.4	226.5	199.9	199.9
SOC.RC.M	986.3	986.3	929.5	986.3	929.5	– 70.5
SOC.SC.M	994.6	1,015.5	1,015.5	1,834.7	698.4	698.4
SVO.RC.M	522.8	522.8	406.6	522.8	406.6	406.6
SVO.SC.M	175.6	600.5	600.5	692.3	602.2	602.2
VCS.SC.H	399.5	399.5	263.8	399.5	162.5	33.5
VCS.SC.I	219.0	377.4	377.4	615.2	486.7	486.7
VCS.SC.L	193.1	309.0	309.0	375.8	260.7	260.7
VCS.SC.M	217.3	240.7	240.7	240.7	128.8	0.2
VCT.RC.L	323.7	331.0	331.0	331.0	331.0	– 2,934.7
VCT.RC.M	308.7	308.7	133.6	308.7	133.6	– 3,397.0
VCT.SC.H	NA	NA	NA	NA	NA	– 1,496.8
VCT.SC.I	15.8	77.5	77.5	77.5	77.5	– 1,318.5
VCT.SC.L	91.1	122.8	122.8	242.3	120.3	– 1,093.5
VCT.SC.M	18.8	18.8	18.8	82.5	82.5	– 1,417.2
VOP.RC.L	615.4	1,524.5	1,524.5	1,524.5	1,524.5	1,524.5
VOP.RC.M	638.0	707.1	707.1	707.1	707.1	707.1
VOP.SC.M	143.3	590.0	590.0	1,082.3	992.2	992.2
Shipment-Wtd Average *	169.8	169.8	192.3	242.7	165.5	– 649.8
Consumer Simple PBP (years)						
CB.SC.L	1.0	1.0	1.1	2.0	2.2	2.2
CB.SC.M	1.1	1.1	1.6	1.0	5.0	5.8
HCS.SC.L	5.1	5.1	5.1	5.1	5.1	10.8
HCS.SC.M	0.8	0.8	1.8	0.8	1.8	13.3
HCT.SC.I	4.8	NA	NA	4.8	7.1	14.8
HCT.SC.L	NA	NA	NA	NA	NA	23.5
HCT.SC.M	NA	NA	NA	NA	NA	76.8
HZO.RC.L	13.0	13.0	13.0	13.0	13.0	13.0
HZO.RC.M	13.8	13.8	13.8	13.8	13.8	13.8
HZO.SC.L	0.8	1.1	1.1	2.0	2.8	2.8
HZO.SC.M	1.1	1.6	1.6	3.3	5.2	5.2
SOC.RC.M	2.6	2.6	3.3	2.6	3.3	15.9
SOC.SC.M	0.1	1.1	1.1	2.1	5.4	5.4
SVO.RC.M	4.8	4.8	7.3	4.8	7.3	7.3
SVO.SC.M	1.2	2.7	2.7	4.1	4.3	4.3
VCS.SC.H	0.2	0.2	1.8	0.2	3.7	4.4
VCS.SC.I	0.4	1.4	1.4	3.1	3.4	3.4
VCS.SC.L	0.4	1.5	1.5	2.7	3.2	3.2
VCS.SC.M	0.4	1.4	1.4	1.4	4.1	5.0
VCT.RC.L	6.2	6.4	6.4	6.4	6.4	52.2
VCT.RC.M	6.5	6.5	10.9	6.5	10.9	93.9
VCT.SC.H	NA	NA	NA	NA	NA	43.0
VCT.SC.I	4.6	8.3	8.3	8.3	8.3	35.0
VCT.SC.L	2.0	2.6	2.6	5.3	5.8	18.5
VCT.SC.M	3.8	3.8	3.8	7.6	7.6	45.2
VOP.RC.L	4.3	3.6	3.6	3.6	3.6	3.6
VOP.RC.M	4.1	5.7	5.7	5.7	5.7	5.7
VOP.SC.M	2.1	2.6	2.6	3.4	3.6	3.6
Shipment-Wtd Average *	2.2	2.2	3.1	4.1	5.5	23.1
Percent of Consumers that Experience a Net Cost						
CB.SC.L	0.0	0.0	0.0	0.2	1.3	1.3
CB.SC.M	0.0	0.0	3.3	0.0	45.9	73.7
HCS.SC.L	22.2	22.2	22.2	22.2	22.2	96.1
HCS.SC.M	0.0	0.0	4.9	0.0	4.9	99.1
HCT.SC.I	15.0	NA	NA	15.0	32.5	85.8
HCT.SC.L	NA	NA	NA	NA	NA	90.5
HCT.SC.M	NA	NA	NA	NA	NA	91.4
HZO.RC.L	7.8	7.8	7.8	7.8	7.8	7.8
HZO.RC.M	10.8	10.8	10.8	10.8	10.8	10.8
HZO.SC.L	0.0	0.0	0.0	0.2	0.9	0.9
HZO.SC.M	0.0	0.2	0.2	6.8	14.8	14.8
SOC.RC.M	0.0	0.0	1.4	0.0	1.4	70.9
SOC.SC.M	0.0	0.9	0.9	0.0	25.6	25.6
SVO.RC.M	0.0	0.0	18.4	0.0	18.4	18.4
SVO.SC.M	0.0	0.1	0.1	4.6	11.0	11.0
VCS.SC.H	0.0	0.0	18.4	0.0	31.6	52.8

TABLE V.82—SUMMARY OF ANALYTICAL RESULTS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *	TSL 5 *	TSL 6 *
VCS.SC.I	0.0	0.0	0.0	3.6	8.9	8.9
VCS.SC.L	0.0	0.2	0.2	4.3	17.1	17.1
VCS.SC.M	0.0	1.6	1.6	1.6	27.0	56.2
VCT.RC.L	0.0	0.4	0.4	0.4	0.4	99.7
VCT.RC.M	0.0	0.0	24.0	0.0	24.0	100.0
VCT.SC.H	NA	NA	NA	NA	NA	96.9
VCT.SC.I	1.5	1.1	1.1	1.1	1.1	100.0
VCT.SC.L	0.3	0.7	0.7	18.8	37.5	98.2
VCT.SC.M	5.7	5.7	5.7	20.1	20.1	100.0
VOP.RC.L	0.0	0.0	0.0	0.0	0.0	0.0
VOP.RC.M	0.0	8.2	8.2	8.2	8.2	8.2
VOP.SC.M	0.6	0.0	0.0	0.4	1.0	1.0
Shipment-Wtd Average *	2.0	2.0	4.2	8.2	21.9	69.0

Note: The entry “NA” means not applicable because there is no change in the standard at certain TSLs.

* Weighted by shares of each equipment class in total projected shipments in 2022.

DOE first considered TSL 6, which represents the max-tech efficiency levels for all equipment classes. The design options DOE analyzed at this level included the max-tech technologies for all equipment classes. For all open (*i.e.*, equipment classes without doors) and transparent door equipment classes, DOE expects manufacturers would likely need to incorporate occupancy sensors with dimming capability. Open equipment classes would also likely require the use of night curtains. For equipment classes with transparent doors, DOE expects manufacturers would likely need to incorporate vacuum-insulated glass doors. For self-contained equipment classes, DOE expects manufacturers would need to incorporate EC evaporator and condenser fan motors, variable-speed compressors, and microchannel condensers. For closed, self-contained equipment classes using forced-air refrigeration systems, DOE expects manufacturers would also need to incorporate evaporator fan control.

TSL 6 would save an estimated 3.38 quads of FFC energy over 30 years of shipments (2028–2057), an amount DOE considers significant. Under TSL 6, the NPV of consumer benefits would be –\$10.1 billion using a discount rate of 7 percent, and –\$16.5 billion using a discount rate of 3 percent for the same 30-year period.

The cumulative emissions reductions at TSL 6 are 60.7 Mt of CO₂, 18.6 thousand tons of SO₂, 113 thousand tons of NO_x, 0.13 tons of Hg, 514 thousand tons of CH₄, and 0.59 thousand tons of N₂O for the same 30-year period. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 6 is \$3.30 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 6 is \$2.53 billion using a 7-percent discount rate and

\$6.46 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 6 is –\$4.24 billion. Using a 3 – percent discount rate for all benefits and costs, the estimated total NPV at TSL 6 are –\$6.72 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 6, affected purchasers of CRE experience an average LCC savings ranging from –\$3,397.0 to \$1,524.5 with a payback period ranging from 94 years to 2.1 years. For example, for equipment classes VCS.SC.M, VCT.SC.M, VCS.SC.L, VCT.SC.L, and VCT.RC.M, which account for 82% of annual CRE shipments, there is a net LCC savings of \$0.171, –\$1,417.24, \$260.731, –\$1,093.53, and –\$3,397.0 and a PBP of 5.04, 4539, 3.2, 18.5, and 94 years, respectively. Overall, a majority of CRE purchasers (69.0 percent) would experience a net cost and the LCC savings would be negative for 13 of 28 analyzed equipment classes, representing 48% of annual shipments. Furthermore, the shipment-weighted-average PBP is estimated at 23 years, which is generally higher than the average CRE lifetime.

At TSL 6, the projected change in INPV ranges from a decrease of \$300.4 million to an increase of \$243.6 million, which corresponds to a decrease of 9.1 percent and an increase of 7.4 percent, respectively. DOE estimates that industry must invest \$343.8 million to update equipment designs and source, qualify, and test high-efficiency components across their entire CRE portfolio. In 2027, a year before

compliance is required, DOE estimates that approximately 2.2 percent of CRE shipments would meet the efficiency levels analyzed at TSL 6.

At this level, nearly all manufacturers would need to spend notable development time incorporating the analyzed max-tech design options across their entire CRE portfolio. However, most design options analyzed involve more efficient components (*e.g.*, high-efficiency motors) and would not necessitate significant capital investment. CRE equipment classes with transparent doors (*i.e.*, HCT.SC.I, HCT.SC.L, HCT.SC.M, SOC.RC.M, SOC.SC.M, VCT.RC.L, VCT.RC.M, VCT.SC.H, VCT.SC.I, VCT.SC.L, and VCT.SC.M) account for approximately 43.8 percent of industry shipments in 2027. For the 71 manufacturers that offer CRE with transparent doors, implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate safety and durability of their equipment in all commercial settings. In interviews, most manufacturers raised concerns about standards requiring a widespread adoption of vacuum-insulated glass as it is still a relatively untested technology in the commercial refrigeration market. Manufacturers expressed concerns about the potential for reduced equipment reliability as vacuum-insulated glass can be relatively more fragile than existing glass door designs and there is very little industry experience with implementing vacuum-insulated glass in CRE applications. DOE estimates that less than 2 percent of shipments of CRE equipment classes with transparent doors would meet the max-tech efficiencies in 2027. In interviews, manufacturers emphasized that there are currently a limited number of suppliers of vacuum-insulated glass for CRE applications.

Based on this analysis, the Secretary tentatively concludes that at TSL 6 for CRE, the benefits of energy savings,

emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of consumer benefits, economic burden on many CRE purchasers, and the impacts on manufacturers, including the conversion costs that could result in a reduction in INPV. For the manufacturers of CRE with transparent doors, implementing vacuum-insulated glass would require significant engineering resources and testing time to ensure adequate safety and durability of their equipment in all commercial settings. There is limited industry experience incorporating vacuum-insulated glass into CRE designs. And a majority of CRE purchasers (69.0 percent) would experience a net cost and the average LCC savings would be negative. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which represents the highest efficiency level with positive LCC savings for each equipment class. For approximately half of the classes, this TSL represents efficiency levels less than max-tech. For most open (*i.e.*, equipment classes without doors) and transparent door equipment classes, DOE expects manufacturers would likely need to incorporate occupancy sensors with dimming capability. Open equipment classes would also likely require the use of night curtains. For most equipment classes with transparent doors, DOE expects manufacturers would need to incorporate triple-pane, krypton-filled glass doors or vacuum-insulated glass doors. For self-contained equipment classes, DOE expects manufacturers would need to incorporate EC evaporator and condenser fan motors and may require microchannel condensers and variable-speed compressors. For closed, self-contained equipment classes using forced-air refrigeration systems, DOE expects manufacturers would also need to incorporate evaporator fan control.

TSL 5 would save an estimated 3.11 quads of full fuel cycle energy over 30 years of shipments (2028 to 2057), an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be \$2.38 billion using a discount rate of 7 percent, and \$7.10 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 55.8 Mt of CO₂, 17.1 thousand tons of SO₂, 104 thousand tons of NO_x, 0.12 tons of Hg, 472 thousand tons of CH₄, and 0.54 thousand tons of N₂O. The estimated monetary value of the climate benefits

from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at TSL 5 is 3.04 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 5 is \$2.32 billion using a 7-percent discount rate and \$5.94 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is \$7.74 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is \$16.1 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, affected purchasers for each CRE equipment class experience an average LCC savings ranging from \$7.77 to \$1,524.52 with a payback period ranging from 1.765 years to 13.8 years. For example, for equipment classes VCS.SC.M, VCT.SC.M, VCS.SC.L, VCT.SC.L, and VCT.RC.M, which account for 82% of annual CRE shipments, there is a net LCC savings of \$128.91, \$82.53, \$260.73, \$120.34, and \$133.625 and a PBP of 4.1, 7.6, 3.2, 5.8, and 10.9 years, respectively. Overall, approximately 78 percent of affected CRE purchasers would experience a net benefit or not be affected at TSL 5. Furthermore, the estimated shipment-weighted-average LCC savings is \$165.52 and PBP is 5.5 years, which is lower than the average CRE lifetime.

At TSL 5, the projected change in INPV ranges from a decrease of \$159.3 million to a decrease of \$30.9 million, which correspond to decreases of 4.8 percent and 0.9 percent, respectively. DOE estimates that industry must invest \$226.4 million to comply with standards set at TSL 5. In 2027, the year before compliance is required, DOE estimates that approximately 10.8 percent of CRE shipments would meet the efficiency levels analyzed at TSL 5. Similar to TSL 6, DOE expects manufacturers would spend development time updating equipment designs to incorporate high-efficiency components. However, at this level, DOE expects that most manufacturers of CRE with transparent doors could meet the TSL 5 efficiencies without implementing vacuum-insulated glass doors. Of the 11 directly analyzed transparent door equipment classes, only the SOC.SC.M equipment class

would likely require vacuum-insulated glass doors to meet the TSL 5 efficiency levels. SOC.SC.M accounts for approximately 0.4 percent of analyzed industry shipments in 2027.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 5 for CRE would be economically justified. At this TSL, the average LCC savings for all affected purchasers is positive. An estimated 67.1 percent of purchasers experience a net benefit, while 21.9 percent of purchasers experience a net LCC 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 5, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 14 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 5 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing \$3.04 billion in climate benefits (associated with the average SC-GHG at a 3-percent discount rate), and \$5.94 billion (using a 3-percent discount rate) or \$2.32 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes that TSL 5 represents the highest efficiency level for each equipment class with positive LCC savings for each equipment class, and a considerably lower reduction in INPV, and positive consumer NPV compared to TSL 6.

Although DOE considered proposed new and amended standard levels for CRE by grouping the efficiency levels for each equipment class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For all equipment classes, the proposed standard level

represents the maximum energy savings that does not result in negative LCC savings. The ELs at the proposed standard level result in positive LCC savings for all equipment classes, significantly reduce the number of purchasers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has tentatively concluded they are economically justified, as discussed for TSL 5 in the preceding paragraphs. As previously discussed, setting standards at max-tech (TSL 6) would result in negative LCC savings for 13 of the analyzed equipment classes, representing 48 percent of the estimated CRE shipments.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for CRE at TSL 5. The proposed new and amended energy conservation standards for CRE, which are expressed as kWh/day, are shown in table V.83.

TABLE V.83—PROPOSED NEW OR AMENDED ENERGY CONSERVATION STANDARDS FOR CRE

Equipment class	Maximum daily energy consumption (kWh/day)
VOP.RC.H	$0.31 \times \text{TDA} + 1.99$
VOP.RC.M	$0.56 \times \text{TDA} + 3.57$
VOP.RC.L	$2.04 \times \text{TDA} + 6.36$
VOP.RC.I	$2.59 \times \text{TDA} + 8.08$
SVO.RC.H	$0.32 \times \text{TDA} + 1.55$
SVO.RC.M	$0.58 \times \text{TDA} + 2.79$
SVO.RC.L	$2.04 \times \text{TDA} + 6.36$
SVO.RC.I	$2.59 \times \text{TDA} + 8.08$
HZO.RC.H	$0.19 \times \text{TDA} + 1.56$
HZO.RC.M	$0.34 \times \text{TDA} + 2.81$
HZO.RC.L	$0.54 \times \text{TDA} + 6.81$
HZO.RC.I	$0.69 \times \text{TDA} + 8.64$
VCT.RC.H	$0.07 \times \text{TDA} + 0.97$
VCT.RC.M	$0.134 \times \text{TDA} + 1.74$
VCT.RC.L	$0.47 \times \text{TDA} + 2.51$
VCT.RC.I	$0.56 \times \text{TDA} + 2.97$
HCT.RC.M	$0.16 \times \text{TDA} + 0.13$
HCT.RC.L	$0.34 \times \text{TDA} + 0.26$
HCT.RC.I	$0.38 \times \text{TDA} + 0.29$
VCS.RC.H	$0.06 \times V + 0.14$
VCS.RC.M	$0.1 \times V + 0.26$
VCS.RC.L	$0.21 \times V + 0.54$
VCS.RC.I	$0.25 \times V + 0.63$
HCS.RC.M	$0.1 \times V + 0.26$
HCS.RC.L	$0.21 \times V + 0.54$
HCS.RC.I	$0.25 \times V + 0.63$
SOC.RC.H	$0.22 \times \text{TDA} + 0.05$

TABLE V.83—PROPOSED NEW OR AMENDED ENERGY CONSERVATION STANDARDS FOR CRE—Continued

Equipment class	Maximum daily energy consumption (kWh/day)
SOC.RC.M	$0.39 \times \text{TDA} + 0.1$
SOC.RC.L	$0.83 \times \text{TDA} + 0.2$
SOC.RC.I	$1.04 \times \text{TDA} + 0.25$
CB.RC.M	$0.03 \times V + 0.39$
CB.RC.L	$0.13 \times V + 1.37$
VOP.SC.H	$0.69 \times \text{TDA} + 1.94$
VOP.SC.M	$1.25 \times \text{TDA} + 3.48$
VOP.SC.L	$3.29 \times \text{TDA} + 9.15$
VOP.SC.I	$4.18 \times \text{TDA} + 11.63$
SVO.SC.H	$0.65 \times \text{TDA} + 1.77$
SVO.SC.M	$1.18 \times \text{TDA} + 3.18$
SVO.SC.L	$3.25 \times \text{TDA} + 8.78$
SVO.SC.I	$4.13 \times \text{TDA} + 11.16$
HZO.SC.H	$0.27 \times \text{TDA} + 2.06$
HZO.SC.M	$0.48 \times \text{TDA} + 3.71$
HZO.SC.L	$1.48 \times \text{TDA} + 5.5$
HZO.SC.I	$1.97 \times \text{TDA} + 7.34$
VCT.SC.H	$0.053 \times V + 0.85$
VCT.SC.M	$0.054 \times V + 0.86$
VCT.SC.L	$0.234 \times V + 2.38$
VCT.SC.I	$0.6 \times \text{TDA} + 3.2$
HCT.SC.M	$0.06 \times V + 0.37$
HCT.SC.L	$0.08 \times V + 1.23$
HCT.SC.I	$0.34 \times \text{TDA} + 0.43$
VCS.SC.H	$0.0082 \times V + 0.21$
VCS.SC.M	$0.02 \times V + 0.54$
VCS.SC.L	$0.155 \times V + 0.97$
VCS.SC.I	$0.25 \times V + 0.88$
HCS.SC.M	$0.022 \times V + 0.41$
HCS.SC.L	$0.043 \times V + 0.81$
HCS.SC.I	$0.31 \times V + 0.81$
SOC.SC.H	$0.17 \times \text{TDA} + 0.33$
SOC.SC.M	$0.304 \times \text{TDA} + 0.59$
SOC.SC.L	$1.1 \times \text{TDA} + 2.1$
SOC.SC.I	$1.53 \times \text{TDA} + 0.36$
CB.SC.M	$0.049 \times V + 0.54$
CB.SC.L	$0.180 \times V + 1.92$
PD.SC.M	$0.11 \times V + 0.81$
VCT.RC.M.PT	$0.139 \times \text{TDA} + 1.81$
VCT.SC.M.PT	$0.056 \times V + 0.86$
VCT.SC.L.PT	$0.243 \times V + 2.47$
VCS.SC.M.PT	$0.02 \times V + 0.56$
VCS.SC.L.PT	$0.161 \times V + 1.01$
VCT.RC.M.SD	$0.143 \times \text{TDA} + 1.86$
VCT.SC.M.SD	$0.058 \times V + 0.86$
VCT.RC.M.SDPT	$0.149 \times \text{TDA} + 1.93$
VCT.SC.M.SDPT	$0.060 \times V + 0.86$
VCT.RC.M.RI	$0.140 \times \text{TDA} + 1.83$
VCT.SC.M.RI	$0.057 \times V + 0.86$
VCS.SC.M.RI	$0.02 \times V + 0.57$
VCS.SC.L.RI	$0.162 \times V + 1.02$
VCT.RC.M.RT	$0.146 \times \text{TDA} + 1.9$
VCT.SC.M.RT	$0.059 \times V + 0.86$
VCS.SC.M.RT	$0.02 \times V + 0.59$
VCS.SC.L.RT	$0.169 \times V + 1.06$
HCS.SC.L.FA	$0.052 \times V + 0.97$

Unique design characteristic	Abbreviation
Pass-through Door	PT.
Sliding Door	SD.
Sliding and Pass-through Doors	SDPT.
Roll-in Door	RI.
Roll-through Door	RT.
Forced Air Evaporator	FA.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2022\$) of the benefits from operating equipment that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs), and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.84 shows the annualized values for CRE under TSL 5, expressed in 2022\$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for CRE is \$335 million per year in increased equipment costs, while the estimated annual benefits are \$586 million from reduced equipment operating costs, \$174 million from climate benefits, and \$246 million from health benefits. In this case, the net benefit amounts to \$671 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for CRE is \$330 million per year in increased equipment costs, while the estimated annual benefits are \$738 million in reduced operating costs, \$174 million from climate benefits, and \$341 million from health benefits. In this case, the net benefit amounts to \$923 million per year.

TABLE V.84—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE (TSL 5)

	Million 2022\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	738	714	774

TABLE V.84—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CRE (TSL 5)—Continued

	Million 2022\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Climate Benefits *	174	173	179
Health Benefits **	341	340	350
Total Benefits †	1253	1227	1302
Consumer Incremental Equipment Costs	330	338	328
Net Benefits	923	890	974
Change in Producer Cashflow (INPV ‡)	(17)–(3)	(17)–(3)	(17)–(3)
7% discount rate			
Consumer Operating Cost Savings	586	569	613
Climate Benefits * (3% discount rate)	174	173	179
Health Benefits **	246	245	251
Total Benefits †	1006	987	1043
Consumer Incremental Equipment Costs	335	342	334
Net Benefits	671	646	709
Change in Producer Cashflow (INPV ‡)	(17)–(3)	(17)–(3)	(17)–(3)

Note: This table presents the costs and benefits associated with CRE shipped in 2028–2057. These include consumer, climate, and health benefits that accrue after 2057 from the equipment shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2023 Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate.

‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. See sections IV.F and IV.H of this document. DOE's NIA includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the equipment and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (the MIA). See section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 10.0 percent that is estimated in the MIA (see chapter 12 of the NOPR TSD for a complete description of the industry weighted average cost of capital). For commercial refrigeration equipment, those values are –\$16.65 million to –\$3.23 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. See section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document, to provide additional context for assessing the estimated impacts of this proposal to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the INPV into the annualized net benefit calculation for this proposed rule, the annualized net benefits would range from \$907 million to \$920 million at 3-percent discount rate and would range from \$655 million to \$668 million at 7-percent discount rate. Parentheses () indicate negative values.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use equipment-specific certification templates to certify compliance to DOE. For CRE, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the equipment-specific requirements

specified at 10 CFR 429.42 DOE is not proposing to amend the equipment-specific certification requirements for this equipment.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan.

21, 2011) and amended by E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in OMB has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action constitutes a “significant regulatory action” within the scope of section 3(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation as to

why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-general-counsel). DOE has prepared the following IRFA for the equipment that are the subject of this proposed rulemaking.

For manufacturers of CRE, the SBA has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. (See 13 CFR part 121.) The size standards are listed by North American Industry Classification System (“NAICS”) code and industry description and are available at www.sba.gov/document/support--table-size-standards. Manufacturing of CRE is classified under NAICS 333415, “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing new and amended energy conservation standards for CRE. EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, part C of EPCA, added by Public Law 95–619, title IV, section 441(a) (42 U.S.C. 6311–

6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CRE, the subject of this document. (42 U.S.C. 6311(1)(E)) EPCA established standards for certain categories of CRE (42 U.S.C. 6313(c)(2)–(4)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)(B)) On March 28, 2014, DOE published a final rule that prescribed the current energy conservation standards for CRE manufactured on and after March 27, 2017. 79 FR 17725. EPCA provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the equipment 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. 6316(e)(1); 42 U.S.C. 6295(m)(1)) This proposed rulemaking is in accordance with DOE’s obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, part C of EPCA, added by Public Law 95–619, title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. EPCA established standards for certain categories of CRE (42 U.S.C. 6313(c)(2)–(4)) and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6313(c)(6)(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 equipment 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. 6316(e)(1); 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 include definitions (42 U.S.C.

6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

3. Description on Estimated Number of Small Entities Regulated

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market assessment to identify potential small manufacturers of CRE. DOE began its assessment by compiling an equipment database of CRE models available in the United States. To develop a comprehensive equipment database of CRE basic models, DOE reviewed its Compliance Certification Database (“CCD”)¹¹⁰ supplemented by information from California Energy Commission’s Modernized Appliance Efficiency Database System,¹¹¹ individual company websites, and prior CRE rulemakings. To identify chef bases, griddle stands, and high-temperature units, DOE reviewed publicly available data from web scraping retail websites. DOE then reviewed the comprehensive equipment database to identify the OEMs of the CRE models identified. DOE consulted publicly available data, such as manufacturer websites, manufacturer specifications and equipment literature, import/export logs (e.g., bills of lading from Panjiva¹¹²), and basic model numbers, to identify OEMs of CRE. DOE further relied on public data and subscription-based market research tools (e.g., Dun & Bradstreet reports¹¹³) to determine company, location, headcount, and annual revenue. DOE also asked industry representatives if they were aware of any small manufacturers during manufacturer interviews. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the SBA’s definition of a “small

business,” or are foreign-owned and operated.

DOE initially identified 83 OEMs that sell CRE in the United States. Of the 83 OEMs identified, DOE tentatively determined that 25 companies qualify as small businesses and are not foreign-owned and operated.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

Of the 25 small, domestic CRE OEMs, 24 OEMs manufacture vertical equipment classes (i.e., vertical open (“VOP”), vertical closed transparent (“VCT”), or vertical closed solid (“VCS”)), 8 OEMs manufacture semi-vertical open (“SVO”) equipment classes (i.e., medium temperature remote condensing (“RC”; “SVO.RC.M”) or medium temperature self-contained (“SC”; “SVO.SC.M”)), 7 OEMs manufacture service-over-counter (“SOC”) equipment classes (i.e., SOC.RC.M or SOC.SC.M), 10 OEMs manufacture horizontal equipment classes (i.e., horizontal open (“HZO”), horizontal closed transparent (“HCT”), or horizontal closed solid (“HCS”)), and 3 OEMs manufacture chef bases.

For the purposes of this IRFA, DOE assumed that the industry capital conversion costs would be evenly distributed across the OEMs that manufacture each equipment class to avoid underestimating the potential capital investments small manufacturers may incur as a result of the proposed standard. As discussed in section IV.J.2.c of this document, DOE scaled the industry capital conversion costs by the number of OEMs offering models of the respective equipment class. For product conversion costs, DOE assumed all small businesses would choose to redesign or replace models that do not meet the proposed TSL 5 efficiency levels. DOE used basic model counts to scale the industry product conversion costs, as discussed in section IV.J.2.c of this document. DOE expects manufacturers would have to incorporate various high-efficiency components to meet the TSL 5 efficiencies across their CRE offerings. For certain transparent door equipment classes, capital conversion costs may be necessary to incorporate improved door designs. For self-contained equipment classes, many manufacturers would likely have to incorporate VSCs into CRE designs. To incorporate VSCs, which could be larger than existing single-speed compressors, manufacturers may need new tools for the baseplate. Product conversion costs may be necessary to qualify, source, and

test new high-efficiency components (e.g., electronically commutated motors).

Out of the 24 small OEMs of vertical equipment classes, DOE expects 23 OEMs would incur some conversion costs to redesign models that do not currently meet the proposed efficiency levels. The remaining small OEM would likely not incur conversion costs as a direct result of the proposed standard as all of their vertical CRE models currently meet or exceed the proposed levels. Vertical equipment classes account for approximately 90.1 percent of industry shipments in 2027. All the VOP and VCT equipment classes would likely require manufacturers to incorporate occupancy sensors to meet TSL 5. DOE further expects VOP equipment classes would also need to incorporate night curtains. DOE expects manufacturers of VOP.SC.M would likely also need to incorporate EC condenser fan motors, VSCs, and microchannel condensers. Some VCT equipment classes would likely need to incorporate triple pane glass with krypton fill. VCT.SC.M, and VCT.SC.L likely would further need to incorporate EC condenser fan motors and VSCs. For most VCS equipment classes, manufacturers would likely need to incorporate evaporator fan controls, EC evaporator fan motors, EC condenser fan motors, VSCs, and microchannel condensers.

DOE expects all 8 small OEMs of semi-vertical equipment classes would incur some conversion costs to redesign models that do not currently meet the proposed efficiency levels. Semi-vertical equipment classes account for approximately 2.1 percent of industry shipments in 2027. All semi-vertical equipment classes would likely need to incorporate occupancy sensors and night curtains. SVO.SC.M would also likely require EC evaporator fan motors, EC condenser fan motors, VSCs, and microchannel condensers.

Out of the 7 small OEMs of service-over-counter equipment classes, DOE expects 6 OEMs would incur some conversion costs to redesign models that do not currently meet the proposed efficiency levels. The remaining small OEM would likely not incur conversion costs as a direct result of the proposed standard as all of their service-over-counter CRE models currently meet or exceed the proposed levels. Service-over-counter equipment classes account for approximately 0.5 percent of industry shipments in 2027. SOC.RC.M and SOC.SC.M would likely incorporate occupancy sensors. SOC.RC.M would also likely require triple pane glass doors with krypton fill. SOC.SC.M would also likely require VIG doors,

¹¹⁰ U.S. Department of Energy’s Compliance Certification Database is available at www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*. (last accessed April 13, 2023.)

¹¹¹ California Energy Commission’s Modernized Appliance Efficiency Database is available at: <https://cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx>. (last accessed February 2, 2022.)

¹¹² S&P Global. Panjiva Market Intelligence. panjiva.com/import-export/United-States. (last accessed April 13, 2023.)

¹¹³ D&B Hoover’s subscription login is accessible at: app.dnbhoovers.com. (last accessed April 13, 2023.)

evaporator fan controls, EC evaporator fan motors, EC condenser fan motors, VSCs, and microchannel condensers.

Out of the 10 small OEMs of horizontal equipment classes, DOE expects 9 OEMs would incur some conversion costs to redesign models that do not currently meet the proposed efficiency levels. The remaining small OEM would likely not incur conversion costs as a direct result of the proposed standard as all of their horizontal CRE models currently meet or exceed the proposed levels. Horizontal equipment classes account for approximately 5.9 percent of industry shipments in 2027. For HZO equipment classes, manufacturers would likely incorporate occupancy sensors. For HZO.SC.M and HZO.SC.L equipment classes, manufacturers

would likely incorporate EC evaporator fan motors, EC condenser fan motors, VSCs, and microchannel condensers. DOE expects that HCT.SC.I would likely need to incorporate VSCs and occupancy sensors to meet TSL 5 levels. For HCS equipment classes, manufacturers would likely incorporate EC condenser fan motors. HCS.SC.M would also likely require evaporator fan controls and EC condenser fan motors.

DOE expects all 3 small OEMs offering chef base equipment classes to incur some conversion costs to redesign models that do not meet efficiency levels at TSL 5. Chef base equipment classes account for approximately 1.4 percent of industry shipments in 2027. Manufacturers would likely incorporate EC evaporator fan motors, EC condenser

fan motors, and VSCs for CB.SC.M. None of the small businesses offer CB.SC.L.

Based on annual revenue estimates from market research tools (e.g., Dun & Bradstreet reports), the annual revenue of the small, domestic OEMs identified range from approximately \$2.8 million to \$448.6 million, with an average annual revenue of approximately \$112.9 million. DOE estimates that conversion costs could range from \$0.0 million to \$15.3 million, with the average per OEM conversion costs of \$2.8 million. The estimated total conversion costs as a percent of company revenue over the 3-year conversion period range from approximately 0.0 percent to 9.6 percent, with an average of 1.7 percent. See table VI.1 for additional details.

TABLE VI.1—POTENTIAL SMALL BUSINESS IMPACTS (TSL 5)

Company	Est. conversion costs (\$ millions)	Est. annual revenue (\$ millions)	Conversion costs as a % of conversion period revenue** (%)	Vertical	Semi-vertical	Service-over-counter	Horizontal	Chef base
A	0.25	2.8	3.0	X	.....	.....	.....	.....
B	0.21	4.1	1.7	X	.....	.....	.....	.....
C	1.58	5.5	9.6	X	X	X	.....	.....
D	0.00	6.3	0.0	.....	.....	.....	X	.....
E	2.41	10.8	7.4	X	X	X	.....	.....
F	0.88	13.6	2.2	X	.....	.....	X	.....
G	0.05	25.4	0.1	X	.....	.....	.....	.....
H	0.22	26.9	0.3	X	.....	.....	.....	.....
I	1.42	28.6	1.7	X	X	.....	.....	.....
J	1.78	58.1	1.0	X	.....	.....	.....	.....
K	0.77	71.9	0.4	X	.....	.....	X	.....
L	0.26	74.9	0.1	X	.....	.....	.....	.....
M	5.46	85.3	2.1	X	.....	.....	X	.....
N	2.15	96.8	0.7	X	.....	.....	.....	.....
O	7.35	110.3	2.2	X	X	X	X	X
P	15.31	131.1	3.9	X	X	X	X	.....
Q	5.70	142.3	1.3	X	X	X	X	.....
R	0.24	143.1	0.1	X	.....	.....	.....	.....
S	14.29	156.1	3.1	X	.....	.....	X	X
T	2.35	156.3	0.5	X	.....	.....	X	X
U	0.48	193.7	0.1	X	.....	.....	.....	.....
V	0.63	212.5	0.1	X	.....	.....	.....	.....
W	4.86	269.3	0.6	X	X	X	X	.....
X	0.28	307.9	0.0	X	.....	.....	.....	.....
Y	0.56	488.6	0.0	X	X	X	.....	.....

*The "X" indicates that the manufacturer offers CRE models of the respective equipment family.

**This column is calculated by dividing the estimated conversion costs by the revenue during the three year the conversion period: (Est. Conversion Costs) ÷ [(Est. Annual Revenue) × 3 years].

***All models of directly analyzed CRE equipment classes meet or exceed the proposed efficiency levels. Therefore, DOE tentatively does not expect this manufacturer would incur conversion costs as direct result of the rule, if the standards were finalized as proposed.

DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by equipment class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 5. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, TSL 3, and TSL 4 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings. TSL 1 achieves 67.0 percent

lower energy savings compared to the energy savings at TSL 5. TSL 2 achieves 43.7 percent lower energy savings compared to the energy savings at TSL 5. TSL 3 achieves 41.0 percent lower energy savings compared to the energy savings at TSL 5. TSL 4 achieves 10.6 percent lower energy savings as compared to the energy savings at TSL 5.

Based on the presented discussion, establishing standards at TSL 5 balances the benefits of the energy savings at TSL 5 with the potential burdens placed on

CRE manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

Additional compliance flexibilities may be available through other means. Manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of CRE must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for CRE, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer equipment and commercial equipment, including CRE. (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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 ("NEPA") and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021,

subpart D, appendix B5.1. DOE anticipates that this proposed rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (See 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to

minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR

12820. DOE's policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by CRE 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 CRE, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6316(e)(1) and 42 U.S.C. 6295(m), this proposed rule would establish new and amended energy conservation standards for CRE that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6316(e)(1) and 42 U.S.C. 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 proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family

Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action,

the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new and amended energy conservation standards for CRE, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.¹¹⁴ 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

¹¹⁴ 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 May 22, 2023).

with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.¹¹⁵

VII. Public Participation

In response to the June 2022 Preliminary Analysis, DOE received a comment from NAMA requesting the Department to conduct an in person public meeting. NAMA commented that it is requesting an in person public meeting due to the webinar held on August 8, 2022, feeling rushed and to allow time for full dialogue on these important subjects. (NAMA, No. 37, p. 4)

After carefully considering NAMA's request, the Department has decided to grant the request for an in-person public meeting. Consequently, DOE will be hosting an in-person public meeting in addition to the webinar. Please note that attendance will be limited for the in-person public meeting due to room size capacity limits.

A. Participation in the Public Meeting and Webinar

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, you must notify the Appliance and Equipment Standards Program staff no later than November 1, 2023, either by phone at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov. Please note advance registration is required and capacity in the meeting room will be limited.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these 5

devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security ("DHS"), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at www.dhs.gov/real-id-enforcement-brief. A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal Government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid

discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other

¹¹⁵ The report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The www.regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail.

Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to www.regulations.gov. If you do not want your personal contact information to be

publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (“faxes”) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comments on its proposal to require that the proposed standards, if adopted, would apply to all CRE listed in table I.1 manufactured in, or imported into, the United States on or after the date that is 3 years after the date on which the final new and amended standards are published. More generally, DOE requests comment on whether it would be beneficial to CRE manufacturers to align the compliance date of any DOE amended or established standards as closely as possible with the refrigerant prohibition dates proposed by the December 2022 EPA NOPR.

(2) DOE requests comment on the impacts to CRE manufacturers and consumers from the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA).

(3) DOE requests comment on the proposed definitions for “cold-wall evaporator,” “forced-air evaporator,” “pass-through doors,” “roll-in door,” “roll-through doors,” “sliding door,” and “rating temperature.”

(4) DOE requests comment on blast chiller or freezer design options, design specifications, and energy consumption data tested per the DOE test procedure located in appendix D of 10 CFR 431.64.

(5) DOE requests comment on refrigerated buffet/preparation table design options, design specifications, and energy consumption data tested per the DOE test procedure located in appendix C of 10 CFR 431.64.

(6) DOE requests comment on publicly available market data on CRE manufacturers or identification of any CRE manufacturers with large market shares not identified in Chapter 3 of the TSD NOPR.

(7) DOE requests comment on the decision to screen out increased insulation thickness, vacuum-insulated panels, linear compressors, and air curtain design as design options for improving the energy efficiency of CRE.

(8) DOE requests comment on its proposal to use baseline levels for CRE equipment based upon the anticipated design changes that will be made by manufacturers in response to the December 2022 EPA NOPR.

(9) DOE further requests comment on its estimates of energy-use reduction associated with the design changes made by manufacturers in response to the December 2022 EPA NOPR.

(10) DOE requests comment on its proposal to apply an energy use multiplier to certain equipment classes that contain CRE with unique utility and energy use characteristics. DOE additionally requests comment on the proposed multiplier values and equipment classes for which these multipliers would be applied.

(11) DOE seeks comment on the method for estimating manufacturing production costs.

(12) DOE requests comment on the CRE distribution channels and overall on the markups analysis.

(13) DOE requests comment on its approach for the energy use analysis.

(14) DOE requests comment on its price learning assumptions and methodology.

(15) DOE requests comment and data to inform how any of the analyzed design options would require additional installation time, training, or other related skills compared to the baseline equipment.

(16) DOE requests comment and data on its assumptions and approach regarding consideration of repair and maintenance costs in the LCC and PBP analyses. Specifically, DOE requests data on the expected lifetimes and repair and maintenance frequencies of the considered design options in this NOPR.

(17) DOE requests comment and data regarding the CRE lifetime assumptions and methodology.

(18) DOE requests comment and data on the assumed business types and the corresponding CRE lifetimes at which refurbishment may occur.

(19) DOE requests comment on its methodology and data to better inform the no-standards-case efficiency distribution for CRE.

(20) DOE requests comment on the price elasticity assumptions for the CRE shipments analysis as they relates to the overall CRE market and the market for refurbished CRE.

(21) DOE requests comment on its assumption of no efficiency trend for CRE and seeks historical CRE efficiency data, ideally by equipment class or alternatively by equipment family, or overall for the CRE market as a whole.

(22) DOE seeks comment on the use of a 1.40 manufacturer markup for all CRE equipment classes analyzed in this proposed rule. DOE also seeks comment on the estimated manufacturer markups and incremental MSPs that result from the analyzed energy conservation standards.

(23) DOE requests detailed comment and information on the capital investments associated with each analyzed design option. In particular, DOE requests detailed comment and feedback on the specific changes in equipment and tooling required to incorporate microchannel heat exchangers, as DOE currently models microchannel heat exchangers as a purchased part that can be substituted for tube and fin heat exchangers with minor production line changes.

(24) DOE requests comment on the availability of computer chips and other electrical components used in CREs and specifically if these components are used to achieve higher efficiency levels.

(25) DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

(26) DOE seeks comment on whether manufacturers expect that manufacturing capacity constraints, engineering resource constraints, or laboratory constraints would limit equipment availability to consumers in the timeframe of the new and amended standards compliance date (2028).

(27) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of CRE associated with multiple DOE standards or equipment/product-specific regulatory actions of other Federal agencies.

(28) DOE requests comments on the magnitude of costs associated with transitioning CRE designs and production facilities to accommodate low-GWP refrigerants that would be incurred between the publication of this NOPR and the proposed compliance date of new and amended standards. Quantification and categorization of these costs, such as engineering efforts, testing lab time, certification costs, and capital investments (e.g., new charging equipment), would enable DOE to refine its analysis.

(29) DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by equipment class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

(30) Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on September 28, 2023, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 29, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 431.62 by:

■ a. Adding, in alphabetical order, definitions for “Cold-wall evaporator”, “Forced-air evaporator”, and “Pass-through doors”;

■ b. Revising the definition of “Rating temperature”; and

■ c. Adding, in alphabetical order, definitions for “Roll-in door”, “Roll-through doors”, and “Sliding door”.

The additions and revision read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

* * * * *

Cold-wall evaporator means an evaporator that comprises a portion or all of the commercial refrigerator, freezer, and refrigerator freezer cabinet’s interior surface that transfers heat through means other than fan-forced convection.

* * * * *

Forced-air evaporator means an evaporator that employs the use of fan-

forced convection to transfer heat within the commercial refrigerator, freezer, and refrigerator freezer cabinet.

* * * * *

Pass-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator freezer.

* * * * *

Rating temperature means the integrated average temperature a unit must maintain during testing, as determined in accordance with section 2.1. or section 2.2. of appendix B to subpart C of this part, as applicable.

* * * * *

Roll-in door means a door that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into the commercial refrigerator, freezer, and refrigerator freezer.

Roll-through doors means doors located on both the front and rear of the commercial refrigerator, freezer, and refrigerator freezer, that includes a door sweep to seal the bottom of the door and may include a ramp that allows wheeled racks of product to be rolled into and through the commercial refrigerator, freezer, and refrigerator freezer.

* * * * *

Sliding door means a door that opens when a portion of the door moves in a direction generally parallel to its surface.

* * * * *

■ 3. Revise § 431.66 to read as follows:

§ 431.66 Energy conservation standards and their effective dates.

(a) In this section—

(1) The term “V” means the volume of a commercial refrigerator, freezer, and refrigerator-freezer, as determined in

accordance with section 3.1. of appendix B to subpart C of this part.

(2) The term “TDA” means the total display area of a commercial refrigerator, freezer, and refrigerator-freezer, as determined in accordance with section 3.2. of appendix B to subpart C of this part.

(b) Each commercial refrigerator, freezer, and refrigerator-freezer, except as specified in paragraph (d) of this section, manufactured on or after March 27, 2017 and before [Date 3 Years after publication of the final rule in the Federal Register], shall have a daily energy consumption (in kilowatt-hours per day or “kWh/day”), when measured in accordance with the DOE test procedure at § 431.64, that does not exceed the following:

(1) For commercial refrigerators, freezers, and refrigerator-freezers other than commercial hybrids, commercial refrigerator-freezers, or wedge cases:

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Equipment class designation *	Maximum daily energy consumption (kWh/day)
Remote Condensing (RC)	Vertical Open (VOP)	38.0 (M)	≥32.0	VOP.RC.M ..	0.64 × TDA + 4.07.
		0.0 (L)	<32.0	VOP.RC.L ...	2.2 × TDA + 6.85.
		–15.0 (I)	≤–5.0	VOP.RC.I	2.79 × TDA + 8.7.
	Semivertical Open (SVO)	38.0 (M)	≥32.0	SVO.RC.M ..	0.66 × TDA + 3.18.
		0.0 (L)	<32.0	SVO.RC.L ...	2.2 × TDA + 6.85.
		–15.0 (I)	≤–5.0	SVO.RC.I	2.79 × TDA + 8.7.
	Horizontal Open (HZO)	38.0 (M)	≥32.0	HZO.RC.M ..	0.35 × TDA + 2.88.
		0.0 (L)	<32.0	HZO.RC.L ...	0.55 × TDA + 6.88.
		–15.0 (I)	≤–5.0	HZO.RC.I	0.7 × TDA + 8.74.
	Vertical Closed Transparent (VCT).	38.0 (M)	≥32.0	VCT.RC.M ...	0.15 × TDA + 1.95.
		0.0 (L)	<32.0	VCT.RC.L	0.49 × TDA + 2.61.
		–15.0 (I)	≤–5.0	VCT.RC.I	0.58 × TDA + 3.05.
	Horizontal Closed Transparent (HCT).	38.0 (M)	≥32.0	HCT.RC.M ...	0.16 × TDA + 0.13.
		0.0 (L)	<32.0	HCT.RC.L	0.34 × TDA + 0.26.
		–15.0 (I)	≤–5.0	HCT.RC.I	0.4 × TDA + 0.31.
	Vertical Closed Solid (VCS)	38.0 (M)	≥32.0	VCS.RC.M ...	0.1 × V + 0.26.
		0.0 (L)	<32.0	VCS.RC.L	0.21 × V + 0.54.
		–15.0 (I)	≤–5.0	VCS.RC.I	0.25 × V + 0.63.
	Horizontal Closed Solid (HCS)	38.0 (M)	≥32.0	HCS.RC.M ..	0.1 × V + 0.26.
		0.0 (L)	<32.0	HCS.RC.L ...	0.21 × V + 0.54.
		–15.0 (I)	≤–5.0	HCS.RC.I	0.25 × V + 0.63.
Self-Contained (SC)	Service Over Counter (SOC)	38.0 (M)	≥32.0	SOC.RC.M ..	0.44 × TDA + 0.11.
		0.0 (L)	<32.0	SOC.RC.L ...	0.93 × TDA + 0.22.
		–15.0 (I)	≤–5.0	SOC.RC.I	1.09 × TDA + 0.26.
	Vertical Open (VOP)	38.0 (M)	≥32.0	VOP.SC.M ...	1.69 × TDA + 4.71.
		0.0 (L)	<32.0	VOP.SC.L	4.25 × TDA + 11.82.
		–15.0 (I)	≤–5.0	VOP.SC.I	5.4 × TDA + 15.02.
	Semivertical Open (SVO)	38.0 (M)	≥32.0	SVO.SC.M ...	1.7 × TDA + 4.59.
		0.0 (L)	<32.0	SVO.SC.L	4.26 × TDA + 11.51.
		–15.0 (I)	≤–5.0	SVO.SC.I	5.41 × TDA + 14.63.
	Horizontal Open (HZO)	38.0 (M)	≥32.0	HZO.SC.M ...	0.72 × TDA + 5.55.
		0.0 (L)	<32.0	HZO.SC.L	1.9 × TDA + 7.08.
		–15.0 (I)	≤–5.0	HZO.SC.I	2.42 × TDA + 9.
	Vertical Closed Transparent (VCT).	38.0 (M)	≥32.0	VCT.SC.M ...	0.1 × V + 0.86.
		0.0 (L)	<32.0	VCT.SC.L	0.29 × V + 2.95.
		–15.0 (I)	≤–5.0	VCT.SC.I	0.62 × TDA + 3.29.
	Vertical Closed Solid (VCS)	38.0 (M)	≥32.0	VCS.SC.M ...	0.05 × V + 1.36.
		0.0 (L)	<32.0	VCS.SC.L	0.22 × V + 1.38.
		–15.0 (I)	≤–5.0	VCS.SC.I	0.34 × V + 0.88.
	Horizontal Closed Transparent (HCT).	38.0 (M)	≥32.0	HCT.SC.M ...	0.06 × V + 0.37.
		0.0 (L)	<32.0	HCT.SC.L	0.08 × V + 1.23.
		–15.0 (I)	≤–5.0	HCT.SC.I	0.56 × TDA + 0.43.

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Equipment class designation *	Maximum daily energy consumption (kWh/day)
	Horizontal Closed Solid (HCS)	38.0 (M)	≥32.0	HCS.SC.M ...	$0.05 \times V + 0.91$
		0.0 (L)	<32.0	HCS.SC.L	$0.06 \times V + 1.12$
		– 15.0 (I)	≤ – 5.0	HCS.SC.I	$0.34 \times V + 0.88$
	Service Over Counter (SOC)	38.0 (M)	≥32.0	SOC.SC.M ..	$0.52 \times TDA + 1$
		0.0 (L)	<32.0	SOC.SC.L ...	$1.1 \times TDA + 2.1$
		– 15.0 (I)	≤ – 5.0	SOC.SC.I	$1.53 \times TDA + 0.36$
	Pull-Down (PD)	38.0 (M)	≥32.0	PD.SC.M	$0.11 \times V + 0.81$

* The meaning of the letters in this column is indicated in the columns to the left.

(2) For commercial hybrids and commercial refrigerator-freezers, the maximum daily energy consumption (MDEC) for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation in paragraph (b)(1) of this section for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the model:

(i) For commercial hybrids and commercial refrigerator-freezers where two or more independent remote condensing units are each connected to separate, individual compartments, measure the total refrigeration load of each compartment separately according to appendix B to subpart C of this part. The CDEC for the model shall be the sum of the compressor energy consumption (CEC) for each compartment, fan energy consumption (FEC), lighting energy consumption

(LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), condensate evaporator pan energy consumption (PEC), and other applicable energy consumption (OEC).

(ii) For commercial hybrids and commercial refrigerator-freezers where two or more compartments are connected to one remote condensing unit, measure the total refrigeration load of the model according to appendix B to subpart C of this part.

(A) Calculate a weighted adjusted dew point temperature for the model by:

(1) Multiplying the adjusted dew point temperature of each compartment by the volume of that compartment,

(2) Summing the resulting values for all compartments; and

(3) Dividing the resulting total by the total volume of all compartments.

(B) Calculate the CEC for the model using the total refrigeration load and the weighted average adjusted dew point temperature. The CDEC for the model shall be the sum of the CEC, FEC, LEC, AEC, DEC, PEC, and OEC.

(iii) For commercial hybrids and commercial refrigerator-freezers connected to a self-contained condensing unit, measure the TDEC for the model according to appendix B to subpart C of this part.

(3) For wedge cases, measure the CDEC or TDEC according to appendix B

to subpart C of this part. For wedge cases in equipment classes for which a volume metric is used, the MDEC shall be the amount derived from the appropriate standards equation in paragraph (b)(1) of this section. For wedge cases of equipment classes for which a TDA metric is used, the MDEC shall be the amount derived from the appropriate standards equation in paragraph (b)(1) of this section incorporating a value for the TDA that is the product of:

(i) The vertical height of the air-curtain (or glass in a transparent door) and

(ii) The largest overall width of the case, when viewed from the front.

(c) Each commercial refrigerator, freezer, and refrigerator-freezer, except as specified in paragraph (d) of this section, manufactured on or after [Date 3 years after publication of the final rule in the **Federal Register**], shall have a daily energy consumption (in kilowatt-hours per day or "kWh/day"), when measured in accordance with the DOE test procedure at § 431.64, that does not exceed the following:

(1) For commercial refrigerators, freezers, and refrigerator-freezers other than commercial hybrids, commercial refrigerator-freezers, or wedge cases:

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Equipment class designation*	Maximum daily energy consumption (kWh/day)
Remote Condensing (RC) ..	Vertical Open (VOP)	55.0 (H)	>40.0	VOP.RC.H	$0.31 \times TDA + 1.99$
		38.0 (M)	40.0 ≥ × ≥32.0	VOP.RC.M	$0.56 \times TDA + 3.57$
		0.0 (L)	<32.0	VOP.RC.L	$2.04 \times TDA + 6.36$
		– 15.0 (I)	≤ – 13.0	VOP.RC.I	$2.59 \times TDA + 8.08$
	Semivertical Open (SVO)	55.0 (H)	>40.0	SVO.RC.H	$0.32 \times TDA + 1.55$
		38.0 (M)	40.0 ≥ × ≥32.0	SVO.RC.M	$0.58 \times TDA + 2.79$
		0.0 (L)	<32.0	SVO.RC.L	$2.04 \times TDA + 6.36$
		– 15.0 (I)	≤ – 13.0	SVO.RC.I	$2.59 \times TDA + 8.08$
	Horizontal Open (HZO)	55.0 (H)	>40.0	HZO.RC.H	$0.19 \times TDA + 1.56$
		38.0 (M)	40.0 ≥ × ≥32.0	HZO.RC.M	$0.34 \times TDA + 2.81$
		0.0 (L)	<32.0	HZO.RC.L	$0.54 \times TDA + 6.81$
		– 15.0 (I)	≤ – 13.0	HZO.RC.I	$0.69 \times TDA + 8.64$
	Vertical Closed Transparent (VCT)	55.0 (H)	>40.0	VCT.RC.H	$0.07 \times TDA + 0.97$
		38.0 (M)	40.0 ≥ × ≥32.0	VCT.RC.M	$0.134 \times TDA + 1.74$
				VCT.RC.M.PT	$0.139 \times TDA + 1.81$
				VCT.RC.M.SD	$0.143 \times TDA + 1.86$
				VCT.RC.M.SDPT	$0.149 \times TDA + 1.93$
				VCT.RC.M.RI	$0.140 \times TDA + 1.83$

Condensing unit configuration	Equipment family	Rating temperature (°F)	Operating temperature (°F)	Equipment class designation*	Maximum daily energy consumption (kWh/day)
Self-Contained (SC)	Horizontal Closed Transparent (HCT)	0.0 (L)	<32.0	VCT.RC.M.RT	$0.146 \times \text{TDA} + 1.9$
		-15.0 (I)	≤ -13.0	VCT.RC.L	$0.47 \times \text{TDA} + 2.51$
		38.0 (M)	≥ 32.0	VCT.RC.I	$0.56 \times \text{TDA} + 2.97$
		0.0 (L)	<32.0	HCT.RC.M	$0.16 \times \text{TDA} + 0.13$
	Vertical Closed Solid (VCS)	-15.0 (I)	≤ -13.0	HCT.RC.L	$0.34 \times \text{TDA} + 0.26$
		55.0 (H)	>40.0	HCT.RC.I	$0.38 \times \text{TDA} + 0.29$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCS.RC.H	$0.06 \times \text{V} + 0.14$
		0.0 (L)	<32.0	VCS.RC.M	$0.1 \times \text{V} + 0.26$
	Horizontal Closed Solid (HCS)	-15.0 (I)	≤ -13.0	VCS.RC.L	$0.21 \times \text{V} + 0.54$
		38.0 (M)	≥ 32.0	VCS.RC.I	$0.25 \times \text{V} + 0.63$
		0.0 (L)	<32.0	HCS.RC.M	$0.1 \times \text{V} + 0.26$
		-15.0 (I)	≤ -13.0	HCS.RC.L	$0.21 \times \text{V} + 0.54$
	Service Over Counter (SOC)	55.0 (H)	>40.0	HCS.RC.I	$0.25 \times \text{V} + 0.63$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	SOC.RC.H	$0.22 \times \text{TDA} + 0.05$
		0.0 (L)	<32.0	SOC.RC.M	$0.39 \times \text{TDA} + 0.1$
		-15.0 (I)	≤ -13.0	SOC.RC.L	$0.83 \times \text{TDA} + 0.2$
	Chef Base (CB)	38.0 (M)	≥ 32.0	SOC.RC.I	$1.04 \times \text{TDA} + 0.25$
		0.0 (L)	<32.0	CB.RC.M	$0.03 \times \text{V} + 0.39$
		55.0 (H)	>40.0	CB.RC.L	$0.13 \times \text{V} + 1.37$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VOP.SC.H	$0.69 \times \text{TDA} + 1.94$
	Vertical Open (VOP)	0.0 (L)	<32.0	VOP.SC.M	$1.25 \times \text{TDA} + 3.48$
		-15.0 (I)	≤ -13.0	VOP.SC.L	$3.29 \times \text{TDA} + 9.15$
		55.0 (H)	>40.0	VOP.SC.I	$4.18 \times \text{TDA} + 11.63$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	SVO.SC.H	$0.65 \times \text{TDA} + 1.77$
	Semivertical Open (SVO)	0.0 (L)	<32.0	SVO.SC.M	$1.18 \times \text{TDA} + 3.18$
		-15.0 (I)	≤ -13.0	SVO.SC.L	$3.25 \times \text{TDA} + 8.78$
		55.0 (H)	>40.0	SVO.SC.I	$4.13 \times \text{TDA} + 11.16$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	HZO.SC.H	$0.27 \times \text{TDA} + 2.06$
	Horizontal Open (HZO)	0.0 (L)	<32.0	HZO.SC.M	$0.48 \times \text{TDA} + 3.71$
		-15.0 (I)	≤ -13.0	HZO.SC.L	$1.48 \times \text{TDA} + 5.5$
		55.0 (H)	>40.0	HZO.SC.I	$1.97 \times \text{TDA} + 7.34$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCT.SC.H	$0.053 \times \text{V} + 0.85$
	Vertical Closed Transparent (VCT)	0.0 (L)	<32.0	VCT.SC.M	$0.054 \times \text{V} + 0.86$
		-15.0 (I)	≤ -13.0	VCT.SC.M.PT	$0.056 \times \text{V} + 0.86$
		55.0 (H)	>40.0	VCT.SC.M.SD	$0.058 \times \text{V} + 0.86$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCT.SC.M.SDPT	$0.060 \times \text{V} + 0.86$
	Vertical Closed Solid (VCS)	0.0 (L)	<32.0	VCT.SC.M.RI	$0.057 \times \text{V} + 0.86$
		-15.0 (I)	≤ -13.0	VCT.SC.M.RT	$0.059 \times \text{V} + 0.86$
		55.0 (H)	>40.0	VCT.SC.L	$0.234 \times \text{V} + 2.38$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCT.SC.L.PT	$0.243 \times \text{V} + 2.47$
	Horizontal Closed Transparent (HCT)	0.0 (L)	<32.0	VCT.SC.I	$0.6 \times \text{TDA} + 3.2$
		-15.0 (I)	≤ -13.0	VCS.SC.H	$0.0082 \times \text{V} + 0.21$
		55.0 (H)	>40.0	VCS.SC.M	$0.02 \times \text{V} + 0.54$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCS.SC.M.PT	$0.02 \times \text{V} + 0.56$
	Vertical Closed Solid (VCS)	0.0 (L)	<32.0	VCS.SC.M.RI	$0.02 \times \text{V} + 0.57$
		-15.0 (I)	≤ -13.0	VCS.SC.M.RT	$0.02 \times \text{V} + 0.59$
		55.0 (H)	>40.0	VCS.SC.L	$0.155 \times \text{V} + 0.97$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	VCS.SC.L.PT	$0.161 \times \text{V} + 1.01$
	Horizontal Closed Transparent (HCT)	0.0 (L)	<32.0	VCS.SC.L.RI	$0.162 \times \text{V} + 1.02$
		-15.0 (I)	≤ -13.0	VCS.SC.L.RT	$0.169 \times \text{V} + 1.06$
		55.0 (H)	>40.0	VCS.SC.I	$0.25 \times \text{V} + 0.88$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	HCT.SC.M	$0.06 \times \text{V} + 0.37$
	Horizontal Closed Solid (HCS)	0.0 (L)	<32.0	HCT.SC.L	$0.08 \times \text{V} + 1.23$
		-15.0 (I)	≤ -13.0	HCT.SC.I	$0.34 \times \text{TDA} + 0.43$
		55.0 (H)	>40.0	HCS.SC.M	$0.022 \times \text{V} + 0.41$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	HCS.SC.L	$0.043 \times \text{V} + 0.81$
	Service Over Counter (SOC)	0.0 (L)	<32.0	HCS.SC.L.FA	$0.052 \times \text{V} + 0.97$
		-15.0 (I)	≤ -13.0	HCS.SC.I	$0.31 \times \text{V} + 0.81$
		55.0 (H)	>40.0	SOC.SC.H	$0.17 \times \text{TDA} + 0.33$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	SOC.SC.M	$0.304 \times \text{TDA} + 0.59$
	Chef Base (CB)	0.0 (L)	<32.0	SOC.SC.L	$1.1 \times \text{TDA} + 2.1$
		-15.0 (I)	≤ -13.0	SOC.SC.I	$1.53 \times \text{TDA} + 0.36$
		55.0 (H)	>40.0	CB.SC.M	$0.049 \times \text{V} + 0.54$
		38.0 (M)	$40.0 \geq \times \geq 32.0$	CB.SC.L	$0.180 \times \text{V} + 1.92$
	Pull-Down (PD)	0.0 (L)	<32.0	PD.SC.L	$0.180 \times \text{V} + 1.92$
		38.0 (M)	≥ 32.0	PD.SC.M	$0.11 \times \text{V} + 0.81$

*The meaning of the letters in this column are indicated in the columns to the left or as follows: “.PT” represents pass-through doors; “.SD” represents sliding doors; “.SDPT” represents sliding and pass-through doors; “.RI” represents roll-in doors; “.RT” represents roll-through doors; and “.FA” represents forced air evaporators.

(2) For commercial hybrids and commercial refrigerator-freezers, the MDEC for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the

appropriate equipment class based on that compartment’s equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment’s TDA or

volume into the standard equation in paragraph (c)(1) of this section for that compartment’s equipment class. Measure the CDEC or TDEC for the model:

(i) For commercial hybrids and commercial refrigerator-freezers where two or more independent remote

condensing units are each connected to separate, individual compartments, measure the total refrigeration load of each compartment separately according to appendix B to subpart C of this part. The CDEC for the model shall be the sum of the CEC for each compartment, FEC, LEC, AEC, DEC, PEC, and OEC.

(ii) For commercial hybrids and commercial refrigerator-freezers where two or more compartments are connected to one remote condensing unit, measure the total refrigeration load of the model according to appendix B to subpart C of this part.

(A) Calculate a weighted adjusted dew point temperature for the model by:

(1) Multiplying the adjusted dew point temperature of each compartment by the volume of that compartment,

(2) Summing the resulting values for all compartments, and

(3) Dividing the resulting total by the total volume of all compartments.

(B) Calculate the CEC for the model using the total refrigeration load and the weighted average adjusted dew point temperature. The CDEC for the model shall be the sum of the CEC, FEC, LEC, AEC, DEC, PEC, and OEC.

(iii) For commercial hybrids and commercial refrigerator-freezers connected to a self-contained condensing unit, measure the TDEC for the model according to appendix B to subpart C of this part.

(3) For wedge cases, measure the CDEC or TDEC according to appendix B to subpart C of this part. For wedge cases in equipment classes for which a volume metric is used, the MDEC shall be the amount derived from the appropriate standards equation in paragraph (c)(1) of this section. For

wedge cases of equipment classes for which a TDA metric is used, the MDEC shall be the amount derived from the appropriate standards equation in paragraph (c)(1) of this section incorporating a value for the TDA that is the product of:

(i) The vertical height of the air-curtain (or glass in a transparent door) and

(ii) The largest overall width of the case, when viewed from the front.

(d) The energy conservation standards in paragraph (b) of this section do not apply to chef bases or griddle stands. The energy conservation standards in paragraphs (b) through (c) of this section do not apply to buffet tables or preparation tables, blast chillers, blast freezers, or mobile refrigerated cabinets.

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Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Transfer of Clean Vehicle Credits Under Section 25E and Section 30D;
Proposed Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 301****[REG–113064–23]****RIN 1545–BQ86****Transfer of Clean Vehicle Credits Under Section 25E and Section 30D****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding certain clean vehicle credits as established by the Inflation Reduction Act of 2022. The proposed regulations would provide guidance for taxpayers who purchase qualifying previously-owned clean vehicles or purchase qualifying new clean vehicles and intend to transfer the amount of any previously-owned clean vehicle credit or new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed regulations also would provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or new clean vehicle credits, and rules regarding recapture of the credits. The proposed regulations would affect taxpayers intending to transfer previously-owned clean vehicle or new clean vehicle credits and eligible entities to whom the credits are transferred, as well as taxpayers who purchased previously-owned clean vehicles or new clean vehicles in the event the vehicles cease being eligible for the credits. The proposed regulations also provide guidance on the meaning of three new definitions added to the exclusive list of “mathematical or clerical errors” relating to certain assessments of tax without a notice of deficiency.

DATES: Written or electronic comments and requests for a public hearing must be received by December 11, 2023. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–113064–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public

Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG–113064–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317–6901 (not a toll-free number) or send an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Background****I. Overview**

Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added section 25E to the Internal Revenue Code (Code) and amended section 30D of the Code. Section 25E provides a credit (section 25E credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to a previously-owned clean vehicle that a taxpayer purchases and places in service. Section 30D provides a credit (section 30D credit) against the tax imposed by chapter 1 with respect to each new clean vehicle that a taxpayer purchases and places in service. Both the section 25E credit and section 30D credit are determined and allowable with respect to the taxable year in which the taxpayer places the previously-owned clean vehicle or new clean vehicle, as applicable, in service. In addition, several of the provisions of section 25E incorporate by cross-reference some of the definitions and rules of section 30D. The IRA also amended section 6213 of the Code by adding three new definitions to the exclusive list of “mathematical or clerical errors” in section 6213(g)(2). These new definitions are set out in sections 6213(g)(2)(T), (U), and (V).

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 25E and 30D and to the Procedure and Administration Regulations (26 CFR part 301) under section 6213 (proposed regulations). The proposed regulations under section 30D supplement a notice of proposed rulemaking (REG–120080–22) published

in the **Federal Register** (88 FR 23370) on April 17, 2023 (April 2023 proposed regulations) that contains initial proposed regulations under section 30D as amended by the IRA.

A. Section 30D New Clean Vehicle Credit

Section 30D was enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of the IRA. In general, the amendments made by section 13401 of the IRA to section 30D apply to vehicles placed in service after December 31, 2022, except as provided in section 13401(k)(2) through (5) of the IRA.

Effective beginning on April 18, 2023, section 30D(b) provides a maximum credit of \$7,500 per new clean vehicle, consisting of \$3,750 if certain critical minerals requirements are met and \$3,750 if certain battery components requirements are met. These requirements are described in section 30D(e)(1) and (2), respectively, and the April 2023 proposed regulations.

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, the section 30D credit is treated as a personal credit allowable under subpart A of part IV of subchapter A of chapter 1. Section 30D(c)(2). However, the amount of the section 30D credit that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year business credit under section 38(b) instead of being allowed under section 30D. Section 30D(c)(1). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

The April 2023 proposed regulations addressed the case of mixed-use vehicles. Section 30D(c)(1) requires that so much of the section 30D credit that would be allowed under section 30D(a) for any taxable year (determined without regard to section 30D(c)) that is attributable to a depreciable vehicle must be treated as a general business credit under section 38 that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the use of which is 50 percent or more business use in the taxable year such

vehicle is placed in service, the section 30D credit that would be allowed under section 30D(a) for that taxable year (determined without regard to section 30D(c)) that is attributable to such depreciable vehicle must be treated as a general business credit under section 38 that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the business use of which is less than 50 percent of a taxpayer's total use of the vehicle for the taxable year in which the vehicle is placed in service, the taxpayer's section 30D credit for that taxable year with respect to that vehicle must be apportioned as follows: (i) the portion of the section 30D credit corresponding to the percentage of the taxpayer's business use of the vehicle is treated as a general business credit under section 30D(c)(1) (and not allowed under section 30D(a)); and (ii) the portion of the section 30D credit corresponding to the percentage of the taxpayer's personal use of the vehicle is treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2).

The IRA added several special rules under section 30D(f) applicable to vehicles placed in service after December 31, 2022. These special rules include the rule in section 30D(f)(9) that requires a taxpayer to include on the taxpayer's return for the taxable year the vehicle identification number (VIN) of the vehicle for which the section 30D credit is claimed. In addition, section 30D(f)(10) denies the section 30D credit to certain high-income taxpayers. More specifically, section 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount (modified adjusted gross income (AGI) Limitation). New section 30D(f)(10)(B) provides that the threshold amount is (i) in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$300,000, (ii) in the case of a head of household (as defined in section 2(b) of the Code), \$225,000, and (iii) in the case of any other taxpayer, \$150,000. New section 30D(f)(10)(C) defines "modified adjusted gross income" as adjusted gross income (AGI) increased by any amount excluded from gross income under sections 911, 931, or 933.

The IRA added new section 30D(g) to the Code, which allows the taxpayer to elect to transfer the section 30D credit in certain situations for vehicles placed

in service after December 31, 2023. Section 30D(g)(1) provides that subject to such regulations or other guidance as the Secretary of the Treasury or her delegate (Secretary) determines necessary, a taxpayer may elect to transfer a section 30D credit with respect to a new clean vehicle to an eligible entity (vehicle transfer election). If the taxpayer who acquires a new clean vehicle makes a vehicle transfer election under section 30D(g) with respect to such vehicle, the section 30D credit that would otherwise be allowed to such taxpayer with respect to such vehicle is allowed to the eligible entity specified in such election (and not the taxpayer). Section 30D(g)(2) defines an "eligible entity" with respect to the vehicle for which the section 30D credit is allowed as the dealer that sold such vehicle to the taxpayer and that satisfies the following four requirements set forth in section 30D(g)(2)(A) through (D): (i) the dealer, subject to section 30D(g)(4), must be registered with the Secretary for purposes of section 30D(g)(2), at such time, and in such form and manner, as the Secretary prescribes; (ii) the dealer, prior to the vehicle transfer election and not later than at the time of sale, must have disclosed to the taxpayer purchasing such vehicle the manufacturer's suggested retail price, the value of the section 30D credit allowed and any other incentive available for the purchase of such vehicle, and the amount provided by the dealer to such taxpayer as a condition of the vehicle transfer election; (iii) the dealer, not later than at the time of sale, must have paid the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) an amount equal to the credit otherwise allowable to such taxpayer; and (iv) the dealer with respect to any incentive otherwise available for the purchase of a vehicle for which a section 30D credit is allowed, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, must have ensured that the availability or use of such incentive does not limit the ability of a taxpayer to make a vehicle transfer election, and such election does not limit the value or use of such incentive.

Section 30D(g)(3) addresses the timing of the transfer and provides that any vehicle transfer election cannot be made by the taxpayer any later than the date on which the vehicle for which the section 30D credit is allowed is purchased.

Section 30D(g)(4) provides that upon determination by the Secretary that a dealer has failed to comply with the requirements described in section

30D(g)(2), the Secretary may revoke the dealer's registration.

Section 30D(g)(5) provides that with respect to any payment described in section 30D(g)(2)(C), such payment is not includible in the gross income of the taxpayer and is not deductible with respect to the dealer.

Section 30D(g)(6) addresses the application of certain other requirements to the transfer of credit and provides that in the case of any vehicle transfer election with respect to any vehicle: (i) the basis reduction and no double benefit requirements of section 30D(f)(1) and (2) apply to the taxpayer who acquired the vehicle in the same manner as if the section 30D credit determined with respect to such vehicle were allowed to such taxpayer; (ii) the election in section 30D(f)(6) to not take the section 30D credit does not apply; and (iii) the VIN requirement of section 30D(f)(9) is treated as satisfied if the eligible entity provides the VIN of such vehicle to the Secretary in such manner as the Secretary may provide.

Section 30D(g)(7)(A) provides for the establishment of a program to make advance payments to eligible entities in an amount equal to the cumulative amount of the credits allowed with respect to any vehicles sold by such entity for which a vehicle transfer election described in section 30D(g)(1) has been made. Section 30D(g)(7)(B) provides that rules similar to the rules of section 6417(d)(6) of the Code apply for purposes of the advance payment rules, and section 30D(g)(7)(C) provides that for purposes of 31 U.S.C. 1324, the payments under section 30D(g)(7)(A) are treated in the same manner as a refund due from a credit provision referred to in 31 U.S.C. 1324(b)(2).

Section 30D(g)(8) defines the term "dealer" as a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles. Section 30D(g)(9) defines an "Indian tribal government" as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of section 30D(g) (that is, August 16, 2022) pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Section 30D(g)(10) provides that in the case of any taxpayer who has made a vehicle transfer election with respect to a new clean vehicle and received a payment from an eligible entity, if the section 30D credit would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of the modified AGI limitations in section 30D(f)(10), the income tax imposed on such taxpayer under chapter 1 for the taxable year in which such vehicle was placed in service must be increased by the amount of the payment received by such taxpayer.

No section 30D credit is allowed with respect to a vehicle placed in service after December 31, 2032. Section 13401(k)(4) of the IRA provides that the ability for a taxpayer to elect to transfer a section 30D credit under section 30D(g) applies to vehicles placed in service after December 31, 2023.

B. Section 25E Previously-Owned Clean Vehicles Credit

Section 13402 of the IRA added section 25E to the Code. Section 25E provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit (that is, the section 25E credit) is allowed for the taxable year in an amount equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle.

Section 25E(b)(1) sets a limitation based on modified adjusted gross income and provides that no section 25E credit is allowed for any taxable year if (A) the lesser of (i) the modified adjusted gross income of the taxpayer for such taxable year, or (ii) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (B) the threshold amount. The threshold amount is set forth in section 25E(b)(2) and varies based on a taxpayer's filing status. In the case of a taxpayer filing a joint return or who is a surviving spouse (as defined in section 2(a)), the threshold amount is \$150,000. In the case of a taxpayer who is a head of household (as defined in section 2(b)), the threshold amount is \$112,500. In the case of any other taxpayer, the threshold amount is \$75,000. Section 25E(b)(3) defines modified adjusted gross income as adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933.

Section 25E(c) defines certain terms for purposes of the section 25E credit. Section 25E(c)(1) defines a "previously-owned clean vehicle" as, with respect to a taxpayer, a motor vehicle that satisfies

the following four requirements set forth in section 25E(c)(1)(A) through (D): (i) the model year of the motor vehicle is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle; (ii) the original use of the motor vehicle commences with a person other than the taxpayer; (iii) the motor vehicle is acquired by the taxpayer in a qualified sale, and (iv) the motor vehicle meets the requirements of section 30D(d)(1)(C), (D), (E), (F), and (H) (except for the original use requirement of section 30D(d)(1)(H)(iv)), or is a motor vehicle that satisfies the requirements under section 30B(b)(3)(A) and (B), and has a gross vehicle weight rating of less than 14,000 pounds.

Section 25E(c)(2) defines a "qualified sale" as a sale of a motor vehicle (i) by a dealer (as defined in section 30D(g)(8)), (ii) for a sale price which does not exceed \$25,000, and (iii) that is the first transfer since the date of enactment of the IRA (that is, August 16, 2022) to a qualified buyer other than the person with whom the original use of such vehicle commenced.

Section 25E(c)(3) defines a "qualified buyer" as, with respect to a sale of a motor vehicle, a taxpayer who is an individual with respect to whom no deduction is allowable with respect to another taxpayer under section 151, who purchases such vehicle for use and not for resale, and who has not been allowed a section 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

Section 25E(c)(4) defines a "motor vehicle" and "capacity" to have the meaning given to such terms in section 30D(d)(2) and (4), respectively.

Section 25E(d) provides that no section 25E credit is allowed with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the taxpayer's tax return for the taxable year. Section 25E(e) provides that rules similar to the rules of section 30D(f) (without regard to paragraph (10) or (11) thereof) apply for purposes of section 25E. Section 25E(f) provides that rules similar to section 30D(g) apply to the transfer of a section 25E credit for previously-owned vehicles (thus, a taxpayer also may elect to transfer a section 25E credit).

Section 25E applies to vehicles acquired after December 31, 2022. No section 25E credit is allowed with respect to a vehicle acquired after December 31, 2032. Section 13402(e)(2) of the IRA provides that the ability of a taxpayer to elect to transfer a section 25E credit under section 25E(f) applies to vehicles placed in service by the taxpayer after December 31, 2023.

C. Section 45W Qualified Commercial Clean Vehicle Credit

Section 13403(a) of the IRA added section 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a section 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in section 45W(c), during the taxable year. Section 45W(b)(1) provides that the amount of the section 45W credit is the lesser of: 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or the incremental cost of the vehicle. Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines "comparable vehicle" to mean any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such vehicle. Section 45W(b)(4) provides that the 45W credit is limited to \$7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and \$40,000 for all other vehicles.

Section 45W(c) defines "qualified commercial clean vehicle" for purposes of the section 45W credit. Section 45W(d) establishes special rules for purposes of the section 45W credit, including the application of basis reduction, domestic usage, and recapture rules similar to those under section 30D(f) of the Code and a rule disallowing a double benefit under section 45W for a taxpayer claiming a new clean vehicle credit under section 30D. Section 45W(e) provides that no section 45W credit is allowed with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the tax return for the taxable year. Section 45W(f) grants the Secretary authority to issue regulations or other guidance to carry out the purposes of section 45W, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle.

D. Section 6213 Restrictions Applicable to Deficiencies; Petition to Tax Court

Section 6213(b)(1) authorizes the IRS to make certain assessments of mathematical or clerical errors without first issuing a notice of deficiency under section 6213(a). In lieu of a notice of deficiency giving the taxpayer 90 days

to file a petition in the Tax Court, section 6213(b)(1) requires the IRS to provide the taxpayer notice that an assessment has been or will be made based on a mathematical or clerical error. Section 6213(b)(2)(A) provides that the taxpayer has 60 days to request an abatement of such assessment. If the taxpayer timely requests abatement, then the IRS must abate the assessment. If an assessment is abated, the IRS must first provide a notice of deficiency under section 6213(a) before the IRS can reassess the tax.

Math error assessments were first authorized by section 274(f) of the Revenue Bill of 1926. The legislative history provided that “in the case of a mere mathematical error appearing upon the face of the return, assessment of a tax due to such mathematical error may be made at any time, and that such assessment shall not be regarded as a deficiency notification.” H.R. Rep. No. 69–1, at 11 (1926). The Tax Reform Act of 1976 added section 6213(f)(2) (current section (g)(2)) to the Code, which defined “mathematical or clerical error” as: (A) an error in addition, subtraction, multiplication, or division shown on the return; (B) an incorrect use of an IRS table if the error is apparent from the existence of other information on the return; (C) inconsistent entries on the return; (D) an omission of information required to be supplied on the return in order to substantiate an item on that return; and (E) an entry of a deduction or credit item in an amount which exceeds a statutory limit which is either (a) a specified monetary amount or (b) a percentage, ratio, or fraction—if the items entering into the application of that limit appear on that return.

The definition of mathematical or clerical error as set out in 1976 contained only these five specific items, all of which could be ascertained directly from the face of a return. These items remain in current section 6213(g)(2)(A)–(E). Since that time, Congress has expanded the definition of “mathematical or clerical error” in section 6213(g)(2) several times, and in 1998, added flush language to section 6213(g)(2) that applies to all section 6213(g)(2) subparagraphs: “A taxpayer shall be treated as having omitted a correct TIN [taxpayer identification number] for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.” The legislative history indicates that Congress added this language to clarify that a correct TIN is

one that was assigned by the Social Security Administration (SSA) or the IRS to the individual identified on the return, and that there should be no inconsistencies between the data that is reported on the return and the data from the agency issuing the TIN. H.R. Conf. Rep. No. 825, 105th Cong. 2d Sess. 1588 (1998).

II. Prior Guidance

A. Notice 2022–46

On October 5, 2022, the Treasury Department and the IRS published Notice 2022–46, 2022–43 I.R.B. 302. The notice requested general comments on issues arising under sections 25E and 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals and battery components; (3) foreign entities of concern; (4) recordkeeping and reporting; (5) eligible entities; (6) elections to transfer and advance payments; and (7) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters’ interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. Revenue Procedure 2022–42

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022–42, 2022–52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible credits under these sections. In addition, Revenue Procedure 2022–42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. April 2023 Proposed Regulations

On April 17, 2023, the Treasury Department and the IRS published the April 2023 proposed regulations in the **Federal Register**, 88 FR 23370, which provided proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use and other special rules; and additional proposed rules related to the critical mineral and battery component requirements. The deadline to submit public comments expired on June 16, 2023.

D. Revenue Procedure 2023–33

On October 6, 2023, in addition to filing this notice of proposed rulemaking for public inspection, the Treasury Department and the IRS released Revenue Procedure 2023–33, which will be published on October 23, 2023, in Internal Revenue Bulletin 2023–43, to provide guidance for taxpayers electing to transfer credits under section 25E or 30D and for eligible entities receiving advance payments of credits under sections 30D and 25E. This revenue procedure sets forth the procedures under sections 30D(g) and 25E(f) for the transfer of the previously-owned clean vehicle credit and the new clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the IRS, the procedures for the revocation and suspension of that registration, and the establishment of an advance payment program to eligible entities. In addition, this revenue procedure supersedes sections 5.01 and 6.03 of Revenue Procedure 2022–42, providing new information for the timing and manner of submission of seller reports, respectively. This revenue procedure also supersedes sections 6.01 and 6.02 of Revenue Procedure 2022–42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

Explanation of Provisions

I. Proposed Section 25E Regulations

A. Overview

Section 25E(a) provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle. Proposed § 1.25E–1(a) would state the general rule that an income tax credit is available under section 25E for a qualified buyer of a previously-owned clean vehicle placed in service during the taxable year in an amount equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle. Proposed § 1.25E–1(b) would provide definitions that apply for purposes of section 25E and the proposed section 25E regulations (that is, proposed §§ 1.25E–1 through 1.25E–3). Proposed § 1.25E–1(c) would provide rules regarding the modified adjusted

gross income limitation. Proposed § 1.25E–1(d) would provide rules regarding multiple owners of a vehicle. Proposed § 1.25E–2 would provide special rules under section 25E(e). Proposed § 1.25E–3 would provide rules regarding the election to transfer the 25E credit under section 25E(f).

As discussed later in this Explanation of Provisions section, the proposed rules under section 25E also include severability clauses and generally are proposed to apply to taxable years beginning after the date these regulations are published in the **Federal Register**.

B. General Rules for Purposes of Section 25E

1. Limitations on Modified Adjusted Gross Income

Proposed § 1.25E–1(c)(1) would provide, consistent with section 25E(b), limitations based on the amount of a taxpayer's modified adjusted gross income, proposing that no credit is allowed under section 25E for any taxable year if the lesser of the modified adjusted gross income of the taxpayer for such taxable year, or, the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds the threshold amount. Proposed § 1.25E–1(c)(2), consistent with section 25E(b)(2), would define the “threshold amount” as, in the case of a joint return or a surviving spouse (as defined in section 2(a)), \$150,000; in the case of a head of household (as defined in section 2(b)), \$112,500; and in any other case, \$75,000. Proposed § 1.25E–1(b)(3) would define “modified adjusted gross income” as adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933 of the Code. Proposed § 1.25E–1(c)(3) would provide that if the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, the taxpayer satisfies the limitation if the taxpayer's modified AGI does not exceed the threshold amount in either year based on the applicable filing status for that taxable year. This proposed rule is consistent with proposed § 1.30D–4(b)(4) in the April 2023 proposed regulations.

2. Limitation on Multiple Owners

Proposed § 1.25E–1(d)(1) would provide that the amount of the section 25E credit attributable to a previously-owned clean vehicle may be claimed on only one tax return. In the event a previously-owned clean vehicle is placed in service by multiple owners, no allocation or proration of the section

25E credit is available. This proposed rule is necessary because the structure of section 25E provides for one taxpayer to claim the section 25E credit per vehicle placed in service. See generally section 25E(a), (c)(3), (e) (providing for rules similar to section 30D(f)(8) and (9)) and section 6213(g)(2)(U) of the Code. Section 25E does not contain rules for allocation or proration of the section 25E credit with respect to a single vehicle to multiple taxpayers placing that vehicle in service, and such an allocation or proration would present administrative challenges. Proposed § 1.25E–1(d)(2) would provide that for seller reporting, the name and taxpayer identification number of the vehicle owner claiming the section 25E credit must be listed on the seller report pursuant to sections 25E(c)(1)(D)(i) and 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller report. This proposed rule is consistent with proposed § 1.30D–4(c) in the April 2023 proposed regulations.

C. Definitions for Purposes of Section 25E

1. Dealer

Proposed § 1.25E–1(b)(1) would define “dealer” by reference to the statutory definition provided in section 25E(c)(2)(A) and section 30D(g) except that the term does not include persons licensed solely by a territory of the United States, and does include a dealer licensed in any jurisdiction described in section 30D(g) (other than one exclusively licensed in a territory) that makes sales at sites outside of the jurisdiction in which its licensed. The dealer does not include persons licensed solely by a territory because clean vehicle credits generally are not allowed for vehicles used predominantly outside of the 50 States and the District of Columbia. See sections 30D(f)(4), 25E(e), 50(b)(1), and 7701(a)(9) of the Code. In addition, United States citizens who are bona fide residents of U.S. territories are generally ineligible for Federal tax credits. See sections 931, 932, 933, and former section 935 of the Code. To allow for flexibility, especially in the case of direct-to-consumer sales, the proposed definition of dealer includes a dealer licensed in any jurisdiction described in section 30D(g) (other than one exclusively licensed in a U.S. territory) that makes sales in jurisdictions in which it may not be licensed.

2. Incentive

Proposed § 1.25E–1(b)(2) would define “incentive,” for purposes of the

sale price definition in proposed § 1.25E–1(b)(9), as any reduction in total sale price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and proposed § 1.25E–3.

3. Modified Adjusted Gross Income

Proposed § 1.25E–1(b)(3) would define “modified adjusted gross income” by reference to the statutory definition provided in section 25E(b)(3).

4. Placed in Service

Proposed § 1.25E–1(b)(4) would provide that a previously-owned clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the meaning of “placed in service” for purposes of other provisions of the Code under which property is considered to be “placed in service” when the property is “placed in a condition or state of readiness and availability for a specifically assigned function” and as “the date on which the owner of the vehicle took actual possession of the vehicle.” See §§ 1.46–3(d)(1)(ii) and (d)(4)(i), 1.179–4(e), and 145.4051–1(c)(2); see also § 1.1250–4(b)(2); *Consumers Power Co. v. Commissioner*, 89 T.C. 710 (1987); *Noell v. Commissioner*, 66 T.C. 718, 728–729 (1976).

5. Previously-Owned Clean Vehicle

Proposed § 1.25E–1(b)(5) would define “previously-owned clean vehicle” by reference to the statutory definition provided in section 25E(c)(1).

6. Qualified Buyer

Proposed § 1.25E–1(b)(6), consistent with section 25E(c)(3), would define “qualified buyer” as, with respect to a sale of a motor vehicle, a taxpayer who is an individual, who purchases such vehicle for use and not for resale, with respect to whom no deduction is allowable to another taxpayer under section 151, and who has not been allowed a section 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

7. Qualified Manufacturer

Proposed § 1.25E–1(b)(7) would define “qualified manufacturer” by reference to section 30D(d)(3).

8. Qualified Sale

Section 25E(c)(2) defines “qualified sale” as a sale of a motor vehicle by a

dealer (as defined in section 30D(g)(8)), for a sale price which does not exceed \$25,000, and which is the first transfer since August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced. Proposed § 1.25E–1(b)(8)(i) would define “qualified sale” as a sale of a motor vehicle by a dealer (as defined in proposed § 1.25E–1(b)(1)) for a sale price which does not exceed \$25,000, and which is the first transfer since August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced.

9. First Transfer Rule

Proposed § 1.25E–1(b)(8)(ii) would provide the first transfer rule, which proposes that to be a qualified sale, a transfer must be the first transfer of the previously-owned clean vehicle since August 16, 2022, as shown by the vehicle history of such vehicle, after the sale to the original owner. The proposed first transfer rule would provide certainty that the previously-owned clean vehicle is eligible for the section 25E credit, since the dealer and taxpayer may not otherwise know if the transfer was a qualified sale due to the difficulties in determining whether previous transfers were to qualified buyers. For example, dealers and taxpayers would not be able to determine whether a previous transfer of the vehicle as a used vehicle was to an individual or to a taxpayer who is not a dependent. The taxpayer would be able to rely on the dealer’s representation of the vehicle history in determining whether the first transfer rule is satisfied, provided the seller report is accepted by the IRS. However, taxpayers would also be encouraged to independently examine the vehicle history to confirm whether the first transfer rule is satisfied, using publicly available tools.¹

For purposes of the proposed first transfer rule, the proposed regulations would ignore a transfer to or between dealers. The definition of qualified sale in section 25E(c)(2) requires that a sale must be by a dealer to an individual for the buyer to be able to claim the section 25E credit. If a transfer to a dealer were taken into account as a transfer, the vast majority of eligible vehicles would never qualify for the section 25E credit because a dealer (itself ineligible for the credit) selling a used vehicle will have

acquired the vehicle from the prior owner (for example, as a trade-in) before selling the vehicle as a used vehicle. Treating transfers to dealers as a transfer would thus frustrate Congress’s purpose in enacting section 25E. In addition, the Treasury Department and the IRS understand that transfers between dealers generally do not result in a change of title that would appear on a vehicle history. Accordingly, selling or trading in a vehicle to a dealer for resale should not disqualify the vehicle for purposes of the first transfer rule.

Examples illustrating the first transfer rule are provided in proposed § 1.25E–1(e).

10. Sale Price

Proposed § 1.25E–1(b)(9) would define the “sale price” of a previously-owned clean vehicle as the total sale price agreed upon by the buyer and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives, but excluding separately-stated taxes and fees required by law. The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value. This proposed definition of sale price would include fees and charges imposed by the dealer to prevent dealers from allocating a portion of the price of the previously-owned clean vehicle to separately stated fees (other than those required by law) and charges to avoid the \$25,000 sales price cap in section 25E(c)(2)(B). This proposed definition does not include separate financing, extended warranties, insurance, or maintenance service charges.

11. Section 25E Regulations

Proposed § 1.25E–1(b)(10) would define “section 25E regulations” to mean proposed §§ 1.25E–1, 1.25E–2, and 1.25E–3.

12. Seller Report

Proposed § 1.25E–1(b)(11) would define “seller report” as the report described in section 25E(c)(1)(D)(i) by reference to section 30D(d)(1)(H) and provided by the dealer of a vehicle to the taxpayer and the IRS in the manner provided in, and containing the information described in Revenue Procedure 2023–33. Seller reports must be provided to the IRS electronically. See section II of this Explanation of Provisions for a more detailed discussion of this definition.

II. Section 1.30D–2 Definitions

As noted in part II.C of the Background section, the April 2023 proposed regulations provided, in

relevant part, definitions that apply for purposes of section 30D and the section 30D regulations. These proposed regulations would modify proposed § 1.30D–2 by adding paragraph (j), which proposes a definition for seller report. Sections 5 and 6 of Revenue Procedure 2022–42 provided initial procedures for sellers of vehicles to provide seller reports to the IRS.

Proposed § 1.30D–2(j) would define a “seller report” as the report described in section 30D(d)(1)(H) (which section 25E(c)(1)(D)(i) cross references as part of the definition of a previously-owned clean vehicle) that is provided by the seller of a vehicle to the taxpayer and the IRS. The seller report must be provided to the IRS electronically, and the additional time and manner procedures for providing the seller report, as well as the information that must be included in the seller report, is contained in Revenue Procedure 2023–33, which will supersede relevant portions of Revenue Procedure 2022–42.

III. Special Rules That Apply for Purposes of Section 25E and Section 30D

A. In General

As noted in section II.C of the Background section of this preamble, the April 2023 proposed regulations provided guidance regarding the special rules under section 30D(f). See proposed § 1.30D–4 of the April 2023 proposed regulations. These proposed regulations add provisions to those special rules that are relevant to recapture of the section 25E credit and the section 30D credit. These proposed regulations also add special rules relevant to section 25E. These proposed regulations are accompanied by Revenue Procedure 2023–33.

B. No Double Benefit Rule

Proposed § 1.25E–2(b)(1) would provide that for purposes of sections 25E(e) and 30D(f)(2), the amount of any deduction or other credit allowable under chapter 1 of the Code for a vehicle for which a section 25E credit is allowable must be reduced by the amount of the section 25E credit allowed for such vehicle. Proposed § 1.25E–2(b)(2) would provide rules for the interaction of sections 30D and section 25E and provide that a section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a section 25E credit is allowable for that vehicle does not reduce the amount allowable under section 25E. Accordingly, a taxpayer who otherwise satisfies the requirements of section 25E would be

¹ A list of approved National Motor Vehicle Title Information System data providers can be found at: vehiclehistory.bja.ojp.gov/nmvts_vehiclehistory.

eligible to claim the section 25E credit for a vehicle for which another taxpayer previously claimed the section 30D credit.

C. Recapture of the Section 25E Credit or the Section 30D Credit

Section 25E(e) provides that, for purposes of section 25E, rules similar to the rules of section 30D(f) apply. Section 30D(f)(5) instructs the Secretary to provide regulations for recapturing the benefit of any section 30D credit with respect to any property that ceases to be eligible for the section 30D credit. Thus, proposed §§ 1.25E–2(c) and 1.30D–4(d) would provide corresponding rules under section 30D(f)(5) for cancelled sales, returns, and resales of the vehicle. Because the rules proposed under each section generally are the same, with the exception of references to the clean vehicle credit applicable to the section (that is, the section 25E credit under proposed § 1.25E–2(c) and the section 30D credit under proposed § 1.30D–4(d)), the discussion in section III.D.1 through III.D.3 of this Explanation of Provisions, unless otherwise noted, refers to a “clean vehicle credit” to denote the credit under section 25E and section 30D.

1. Cancelled Sale

Proposed §§ 1.25E–2(c)(1)(i) and 1.30D–4(d)(1)(i) would provide the Federal income tax consequences that apply if the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service (that is, before the taxpayer takes possession of the vehicle). Specifically, in the case of a cancelled sale, the taxpayer may not claim a clean vehicle credit with respect to the vehicle. The vehicle will still be eligible for a clean vehicle credit upon a subsequent qualifying sale to another taxpayer because the vehicle was not placed in service as part of the prior cancelled sale. Additionally, the seller report (as defined in proposed §§ 1.25E–1(b)(11) and 1.30D–2(j) and described in part II of this Explanation of Provisions), if already submitted, must be rescinded by the seller pursuant to the procedures in the procedural guidance published in Revenue Procedure 2023–33. Finally, because the taxpayer is not eligible for the credit, no vehicle transfer election is available under the clean vehicle credit transfer rules described in section IV of this Explanation of Provisions.

2. Vehicle Returns

Proposed §§ 1.25E–2(c)(1)(ii) and 1.30D–4(d)(1)(ii) would provide the Federal income tax consequences that

apply if the taxpayer returns the vehicle to the seller within 30 days of placing the vehicle in service. Specifically, in the case of such return, the taxpayer cannot claim a clean vehicle credit with respect to the vehicle. The Treasury Department and the IRS understand that vehicle retailers may have return policies that range from several days up to 30 days, so the proposed rules regarding returns within 30 days reflect industry practice.

In the case of a return within 30 days of what was a new clean vehicle, the vehicle, once returned, already was placed in service by the taxpayer and therefore is not available for original use by another taxpayer. Because section 30D(d)(1)(A) requires that original use of a new clean vehicle commence with the taxpayer, for purposes of section 30D, the returned vehicle is not eligible for the section 30D credit upon a subsequent sale. In the case of a return of a previously-owned clean vehicle, the vehicle, once returned, is not eligible for the section 25E credit upon a subsequent sale if the vehicle history reflects that the prior sale and return was a qualified sale per section 25E(c)(2)(C). However, if the vehicle history does not reflect the prior sale and return, the vehicle remains eligible for the section 25E credit under the first transfer rule described in proposed § 1.25E–1(b)(8)(ii). The seller report, in the case of a return, must be updated by the seller to reflect the return pursuant to the procedures published in Revenue Procedure 2023–33. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election is nullified, and any advance payment made pursuant to the clean vehicle transfer rules will be recaptured from the eligible entity as an excessive payment.

See section IV.E.1 of this Explanation of Provisions for a discussion of the excessive payment rules described in the preceding paragraph.

3. Resales

Proposed §§ 1.25E–2(c)(1)(iii) and 1.30D–4(d)(1)(iii) would treat the taxpayer as having purchased the vehicle with an intent to resell such vehicle if the resale occurs within 30 days of the taxpayer placing the vehicle in service. Section 30D(d)(1)(B) provides that a new clean vehicle must be acquired for use or lease by the taxpayer and not for resale, and section 25E(c)(3)(B) defines a qualified buyer as purchasing the vehicle for use and not for resale. The Treasury Department and the IRS propose that a resale within 30 days is a sufficiently short period of time to presume that the purchase was

done with the intent to resell. As a result, in such a case the taxpayer who purchased the new clean vehicle and resold it within 30 days may not claim a clean vehicle credit with respect to the vehicle.

In the case of a resale by the taxpayer within 30 days of what was a new clean vehicle, the vehicle, once placed in service for use by the taxpayer, is not considered available for original use by another taxpayer for purposes of section 30D, so the vehicle is not eligible for the section 30D credit upon a subsequent sale. In the case of a resale by the taxpayer within 30 days of what was a previously-owned clean vehicle, the vehicle, once placed in service for use by the taxpayer, is not eligible for the section 25E credit upon a subsequent sale. In the case of a resale of such vehicle, however, the seller report is not required to be updated because the seller may not have knowledge of the subsequent resale. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election remains in effect and the value of any transferred credit pursuant to the clean vehicle transfer rules will be recaptured from the taxpayer (as opposed to the advance payment being collected from the eligible entity as an excessive payment, since the eligible entity is not a party to the subsequent resale).

See section IV.E.2 of this Explanation of Provisions for a discussion of the excessive payment rules of proposed §§ 1.25E–3(g)(2) and 1.30D–5(f)(2) described in the preceding paragraph.

4. Other Returns or Resales

Proposed §§ 1.25E–2(c)(1)(iv) and 1.30D–4(d)(1)(iv) would provide a rule for returns or resales not described in section III.D.2 and 3 of this Explanation of Provisions (that is, returns or resales occurring more than 30 days after the date on which the taxpayer places the vehicle in service). Generally, taxpayers returning or reselling a clean vehicle more than 30 days after the date the taxpayer places in service will remain eligible for the section 30D or section 25E credit for the purchase of such vehicle. The proposed regulations would provide that, in the case of what was a new clean vehicle before the return or resale, the vehicle, once returned or resold, is not available for original use by another taxpayer and, therefore, is not eligible for a section 30D credit. Similarly, in the case of what was a previously-owned clean vehicle before the return or resale, the vehicle, once returned or resold, generally is not eligible for the section 25E credit upon a subsequent sale

pursuant to the first transfer rule described in proposed § 1.25E–1(b)(8)(ii). In the case of return occurring more than 30 days after the date on which the taxpayer places the vehicle in service, the seller report is not required to be updated because the taxpayer generally will be eligible for the clean vehicle credit in this circumstance. In addition, in the case of a resale of such vehicle, the seller report is not required to be updated because the seller would not have knowledge of the subsequent resale. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election remains in effect and the value of any transferred credit pursuant to the clean vehicle transfer rules generally is not subject to recapture or excessive payment.

Although the proposed regulations would not provide an automatic clean vehicle credit recapture rule for returns or resales more than 30 days after a return or resale, the IRS may determine upon facts and circumstances that a clean vehicle was purchased with the intent to return or resell and may disallow the clean vehicle credit in such cases.

The Treasury Department and the IRS request comments as to whether 30 days is the appropriate length of time for the return rule in proposed §§ 1.25E–2(c)(1)(ii) and 1.30D–4(d)(1)(ii) and the resale rule in proposed §§ 1.25E–2(c)(1)(iii) and 1.30D–4(d)(1)(iii).

D. Branded Title Rule

Proposed § 1.25E–2(d) would provide that a title to a previously-owned clean vehicle indicating that such vehicle has been damaged or is otherwise a branded title does not impact the vehicle's eligibility for a section 25E credit.

E. Seller Registration

In general, to be eligible for the section 25E credit and the section 30D credit, a clean vehicle must be accompanied by a seller report. See sections 30D(d)(1)(H) and 25E(c)(1)(D)(i). Proposed §§ 1.25E–2(e) and 1.30D–4(g) would provide that the seller must register with the IRS in the manner set forth in Revenue Procedure 2023–33 for purposes of filing seller reports.

F. Requirement To File a Complete Income Tax Return

As discussed in the April 2023 proposed regulations and in these regulations, a taxpayer will continue to use Form 8936, now titled *Clean Vehicle Credits*, to claim the section 25E or 30D credit, regardless of whether the taxpayer transfers the credit to the

dealer. The IRS cannot properly monitor claims of these credits if taxpayers do not include a completed Form 8936 with their individual income tax returns. Section 6213(g)(2)(D) defines a “mathematical or clerical error” for purposes of math error authority, to include an omission of information which is required to be supplied on the return to substantiate an entry on the return. To ensure that the IRS can appropriately monitor these credits, proposed §§ 1.25E–2(f) and 1.30D–4(h) would clarify that taxpayers must file an income tax return for the taxable year in which the clean vehicle is placed in service to be entitled to the credit under section 25E or 30D. For this purpose, an income tax return is defined as a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor form, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

IV. Transfer Rules for the Section 25E Credit and the Section 30D Credit

Section 30D(g), as noted in more detail in section I.A of the Background section of this preamble, generally establishes a set of rules under which a taxpayer may transfer a section 30D credit to certain dealers, referred to as eligible entities, in which case the eligible entity (and not the taxpayer) is allowed the section 30D credit and in exchange the eligible entity must pay the taxpayer an amount equal to the transferred section 30D credit (with such payment being made either in cash or in the form of a partial payment or down payment for the purchase of the vehicle). Section 25E(f) provides that, for purposes of section 25E, rules similar to the rules of section 30D(g) apply.

The proposed regulations described in this section IV of the Explanation of Provisions are designed in part to ensure program integrity. Advance payment of the section 30D and section 25E credits poses unique compliance challenges, since such advance payments are not subject to the same tax administration procedures that apply to claiming a credit via return filing. Furthermore, participation in the credit transfer and advance payment program is optional. The transfer of the section 30D and 25E credits is elective on the part of the taxpayer, and the eligible entity can decide whether to offer to the taxpayer the ability to transfer such credits (thereby participating in the

advance payment program). Taxpayers instead may choose to wait and claim a section 30D or section 25E credit on the taxpayer's return. Section 30D(g)(1) provides that a taxpayer election to transfer the 30D credit is subject to the regulations or other guidance that the Secretary determines necessary. Section 30D(g)(7) instructs the Secretary to establish a program for making advance payments to eligible entities—that is, payments made by the IRS to the eligible entity before the eligible entity files its Federal income tax return for the relevant taxable year. Taken together, these provisions provide authority for the Secretary to establish the parameters and conditions of the transfer election and the accompanying advance payment program for those taxpayers and eligible entities that choose to participate, in furtherance of sound tax administration.

Proposed §§ 1.25E–3 and 1.30D–5 would provide transfer rules under these provisions (section 30D(g) and section 25E(f) by cross reference to section 30D(g)), including by establishing an advance payment program for such transfers. Because the rules proposed under each section are the same, with the exception of references to the clean vehicle credit applicable to the section (that is, the section 25E credit under proposed § 1.25E–3 and the section 30D credit under proposed § 1.30D–5), the discussion in section IV of this Explanation of Provisions, unless otherwise noted, refers to a “clean vehicle credit” to denote the credit under section 25E and section 30D.

The rules below do not specifically address the requirements, under section 30D(g)(2)(B)(ii) and (D), relating to the disclosure by the dealer of other incentives and the requirement that the dealer ensures that the availability or use of such other incentives do not limit the ability of a taxpayer to make a vehicle transfer election, and such election does not limit the value or use of such incentives. The Treasury Department and the IRS request comments as what guidance, if any, should be given here.

A. Definitions That Apply for Purposes of the Transfer Rules

Proposed §§ 1.25E–3(b) and 1.30D–5(a) would provide definitions that apply for purposes of the transfers of a clean vehicle credit. The definitions described in this section IV.A of the Explanation of Provisions apply to both proposed § 1.25E–3(b) and proposed § 1.30D–5(a).

1. Advance Payment Program

Proposed regulations 1.25E-3(b)(1) and 1.30D-5(a)(1) would define “advance payment program” as the program described in section 30D(g)(7) (and section 25E(f) by cross reference to section 30D(g)) and these proposed regulations under which an eligible entity may receive an advance payment from the Treasury Department in the case of a vehicle transfer election made by an electing taxpayer. The advance payment program represents the exclusive means by which an eligible entity may receive a transferred clean vehicle credit.

2. Dealer

Dealer for purposes of the transfer rules in proposed §§ 1.25E-3(b)(2) and 1.30D-5(a)(2) has the same meaning as that in proposed § 1.25E-1(b)(1) and described in section I.C.1 of this Explanation of Provisions.

3. Dealer Tax Compliance

Dealer tax compliance means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax, and the dealer has paid all Federal tax, penalties, and interest due of the dealer at the time of sale. In the case of an installment agreement, the proposed regulations clarify that a dealer is in dealer tax compliance if the dealer is current on its obligations under that installment agreement. See proposed §§ 1.25E-3(b)(2) and 1.30D-5(a)(3).

4. Electing Taxpayer

Electing taxpayer means the individual that purchases and places in service a clean vehicle and that elects to transfer a clean vehicle credit associated with that vehicle that would otherwise be allowable to that individual. To be an electing taxpayer, the individual must make certain attestations regarding anticipated eligibility for the credit to a registered dealer as provided in Revenue Procedure 2023-33. See proposed §§ 1.25E-3(b)(3) and 1.30D-5(a)(4). For example, the electing taxpayer must make an attestation regarding satisfaction of the modified adjusted gross income limitations for the clean vehicle credit. In addition, for purposes of section 30D, the electing taxpayer must attest to the registered dealer that it plans to use the vehicle predominantly for personal use. *Id.* Because the election to transfer a credit under section 30D(g) is limited to the credit allowable under subsection 30D, a taxpayer may not elect to transfer a general business credit for a new clean vehicle allowable under section 38

instead of section 30D, pursuant to section 30D(c)(1). As described in proposed § 1.30D-1(b)(1) of the April 2023 proposed regulations, a depreciable vehicle the use of which is 50 percent or more business use in the taxable year the vehicle is placed in service is not apportioned between section 38 and section 30D, but instead is creditable entirely under section 38 as a general business credit. Thus, the use of a new clean vehicle must be predominantly personal for a taxpayer to be able to make the election to transfer the credit under section 30D(g). These attestations will help prevent a transfer of the credit for which the taxpayer is ineligible, and therefore will reduce instances of recapture.

5. Eligible Entity

Eligible entity means a registered dealer that meets certain requirements and, by reason of meeting those requirements, is eligible to receive advance payments from the IRS under the advance payment program. See proposed §§ 1.25E-3(b)(4) and 1.30D-5(a)(5). The requirements the eligible entity must meet are described in section IV.D of this Explanation of Provisions.

6. Registered Dealer

Registered dealer refers to a dealer that has completed the registration described in proposed §§ 1.25E-3(c) and 1.30D-5(b) and section IV.B of this Explanation of Provisions. See proposed §§ 1.25E-3(b)(5) and 1.30D-5(a)(6).

7. Time of Sale

Time of sale means the date the clean vehicle is placed in service. The date the clean vehicle is placed in service is the date the taxpayer takes possession of the vehicle. See proposed §§ 1.25E-3(b)(6) and 1.30D-5(a)(7); see also proposed § 1.30D-2(e) of the April 2023 proposed regulations for the definition of placed in service.

B. Dealer Registration and Taxpayer Election

1. Dealer Registration

Proposed §§ 1.25E-3(c)(1) and 1.30D-5(b)(1) would provide that, before being eligible to participate in the advance payment program and receive transfers of clean vehicle credits from an electing taxpayer, a dealer must register (thereby becoming a registered dealer). The dealer will register in the manner set forth in Revenue Procedure 2023-33.

Proposed §§ 1.25E-3(c)(2) and 1.30D-5(b)(2) would provide rules regarding dealer tax compliance. Specifically, if the dealer is not in dealer tax compliance for any of the taxable

periods during the most recent five taxable years, the dealer may register to become a registered dealer, but the dealer cannot receive advance payments under the advance payment program until the dealer tax compliance issue is resolved. In such case, the dealer, while registered, is not an eligible entity until it comes into dealer tax compliance. Relevant procedural guidance regarding dealer tax compliance will be published in the Internal Revenue Bulletin.

Pursuant to section 30D(g)(1) and (g)(7), participation in the advance payment program is elective and is subject to the requirements and conditions that the Secretary determines necessary. Requiring registration of a dealer before it may participate in the advance payment program ensures that only entities that are valid, licensed vehicle dealers are eligible to receive advance payments of the transferred credits. In addition, requiring dealer tax compliance ensures that entities receiving advance payments are current on their Federal tax obligations. Taken together, these requirements help ensure that only compliant, registered dealers receive the benefit of the elective advance payment program by preventing fraud and ensuring sound tax administration.

2. Vehicle Transfer Election

For clean vehicles placed in service after December 31, 2023, the proposed regulations would provide that an electing taxpayer may make an election to transfer a clean vehicle credit otherwise allowable to the electing taxpayer to an eligible entity pursuant to a vehicle transfer election. See proposed §§ 1.25E-3(d) and 1.30D-5(c). The vehicle transfer election is made by the electing taxpayer no later than at the time of sale pursuant to Revenue Procedure 2023-33, and, once made, the vehicle transfer election is irrevocable. To make a valid vehicle transfer election, the electing taxpayer must transfer the entire amount of the clean vehicle credit otherwise allowable to it and, in exchange for the transferred clean vehicle credit, the eligible entity must pay the electing taxpayer an amount equal to the clean vehicle credit included in the vehicle transfer election or treat the credit amount as a down payment or partial payment.

C. Federal Income Tax Consequences of the Vehicle Transfer Election

1. Treatment of Electing Taxpayer

Proposed §§ 1.25E-3(e)(1) and 1.30D-5(d)(1) would provide the Federal income tax treatment of a vehicle transfer election as to an electing

taxpayer. Specifically, the proposed regulations provide that the amount of the clean vehicle credit an electing taxpayer may transfer as part of a vehicle transfer election can exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess amount, if any, generally is not subject to recapture unless recapture pursuant to section 30D(f)(5) or (g)(10) applies. In addition, the payment made (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) by the eligible entity to the electing taxpayer is not includible in the electing taxpayer's gross income for the taxable year. Finally, to ensure appropriate application of the basis reduction rule in section 30D(f)(1) (and section 25E(e) by cross reference to section 30D(f)(1)), the proposed regulations would provide that the payment described in the preceding sentence is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the vehicle.

2. Treatment of Eligible Entity

Proposed §§ 1.25E-3(e)(2) and 1.30D-5(d)(2) would provide the Federal income tax treatment of a vehicle transfer election as to an eligible entity. Specifically, the eligible entity may receive as an advance payment from the Treasury Department the amount of the clean vehicle credit transferred to the eligible entity as part of a vehicle transfer election, which is not includible in the eligible entity's gross income for the taxable year in which such payment is received or accrued, as appropriate, and such payment may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for such taxable year and generally is not subject to recapture unless the excessive payment rules apply. The eligible entity may not deduct the payment made to the electing taxpayer, and, consistent with the treatment as to the electing taxpayer described in section IV.C.1 of this Explanation of Provisions, the electing taxpayer is treated as paying the eligible entity the amount of the transferred clean vehicle credit as part of the purchase price of the clean vehicle. The amount of this payment by the electing taxpayer is treated as part of the amount realized by the eligible entity under section 1001 from the sale of the clean vehicle.

The proposed regulations would provide special rules in the case of an eligible entity that is a partnership or an S corporation. See proposed §§ 1.25E-3(e)(2)(vi) and 1.30D-5(d)(2)(vi). Because the electing taxpayer is treated

as paying the eligible entity the amount of the transferred clean vehicle credit as part of the purchase price of the clean vehicle and the amount of this payment is treated as part of the amount realized by the eligible entity under section 1001 from the sale of the clean vehicle, the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code. These rules would ensure proper basis and capital accounting reporting for advance payments received by partnerships and S corporations and parity in Federal tax treatment regardless of the form through which the eligible entity conducts its business.

3. Other Rules

Proposed §§ 1.25E-3(e)(3) and 1.30D-5(d)(3) would provide that the Federal income tax treatment of the payments associated with a vehicle transfer election are the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for the purchase of the clean vehicle. Additionally, proposed §§ 1.25E-3(e)(4) and 1.30D-5(d)(4) would describe the additional rules that apply by reason of a vehicle transfer election (that is, section 30D(f)(1) and (f)(2), section 30D(f)(6), and section 30D(f)(9), including with respect to the section 25E proposed regulations by reason of the cross reference to section 30D(g) in section 25E(f)).

Proposed § 1.30D-5(d)(5) would provide examples demonstrating the Federal income tax treatment of a vehicle transfer election.

D. Advance Payment Program

As noted earlier in this section, the advance payment program allows an eligible entity to receive payments from the IRS corresponding to the amount of the clean vehicle credit for which a vehicle transfer election was made before the eligible entity files its Federal income tax return for the taxable year with respect to which the vehicle transfer election relates. See proposed §§ 1.25E-3(f) and 1.30D-5(e). To qualify for the advance payment program, a registered dealer (that is, a dealer that meets the registration requirements described in section IV.B of this Explanation of Provisions), must meet additional requirements to be an eligible entity. Those requirements are that the registered dealer must submit additional registration information and be in dealer tax compliance, the registered dealer must retain information related to the vehicle transfer election for the period specified in the proposed regulations, and the registered dealer must meet any other requirements provided in

procedural guidance published in the Internal Revenue Bulletin.

The proposed regulations would also refer to suspension and revocation procedures identified in Revenue Procedure 2023-33. See proposed §§ 1.25E-3(f)(3) and (4) and 1.30D-5(e)(3) and (4). Section 7803(e)(3) provides it is the function of the IRS Independent Office of Appeals (Appeals) to resolve Federal tax controversies without litigation. Decisions made by the IRS relating to the suspension or revocation of a dealer's registration are not Federal tax controversies within the meaning of the section 7803(e)(3) because registration is too attenuated and separate from any tax liability of the registering dealer. These registration-related decisions would have no direct effect on the amount of a dealer's tax liability and likely would only affect the source of the dealer's income. For example, a dealer's ability to benefit from sections 30D(g) or 25E(f) is predicated on registration, a buyer purchasing the eligible clean vehicle, and a buyer making an election to transfer the credit under sections 30D(g) or 25E(f). Only upon those three events would the registration affect the dealer's tax liability. Accordingly, proposed §§ 1.25E-3(f)(3) and (4) and 1.30D-5(e)(3) and (4) would provide that a dealer could not administratively appeal the IRS's decisions relating to the suspension or revocation of a dealer's registration unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

E. Increases in Tax

1. Recapture From Taxpayer

As noted in section I of the Background section of this preamble, section 30D(g)(10) provides that, in the case of any taxpayer who has made an election described in section 30D(g)(1) with respect to a new clean vehicle and received a payment described in section 30D(g)(2)(C) from an eligible entity, if the credit under section 30D would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of section 30D(f)(10) (relating to the modified adjusted gross income limitation), the tax imposed on such taxpayer under chapter 1 for the taxable year in which such vehicle was placed in service will be increased by the amount of the payment received by such taxpayer. Because of the section 25E(f) cross reference to section 30D(g), similar rules will apply for previously-owned clean vehicles.

Proposed §§ 1.25E-3(g)(1) and 1.30D-5(f)(1) would provide that, in the case of a clean vehicle credit that would otherwise not be allowable to a taxpayer that made a vehicle transfer election because the taxpayer exceeds the limitation based on modified adjusted gross income, the income tax imposed on the taxpayer under chapter 1 for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer pursuant to the vehicle transfer election. The taxpayer in such a case must reconcile the amounts on its tax return for the taxable year.

2. Excessive Payment as to Eligible Entity

As noted in section I of the Background section of this preamble, section 30D(g)(7)(B) (and section 25E(f) by cross reference to section 30D(g)) provides that rules similar to the rules of section 6417(d)(6) apply for purposes of the advance payment program. Proposed §§ 1.25E-3(g)(2) and 1.30D-5(f)(2) would provide that, in the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity by chapter 1, regardless of whether such entity would otherwise be subject to chapter 1 tax, for the taxable year in which such determination is made will be increased by the sum of the amount of the excessive payment, plus an amount equal to 20 percent of such excessive payment. The latter amount, however, will not apply if the eligible entity demonstrates to the IRS that the excessive payment was due to reasonable cause, which is presumed to be the case for a clean vehicle returned within 30 days of placing such vehicle in service. See proposed §§ 1.25E-3(g)(2)(ii) and 1.30D-5(f)(2)(ii).

The proposed regulations would provide that an excessive payment means, with respect to an advance payment to an eligible entity pursuant to a vehicle transfer election made by an electing taxpayer, an advance payment made to a registered dealer that fails to meet the requirements to be an eligible entity, or to an eligible entity with respect to a clean vehicle to the extent the payment exceeds the amount of the clean vehicle credit that would be otherwise allowable to the electing taxpayer with respect to the vehicle. See proposed §§ 1.25E-3(g)(2)(iii) and 1.30D-5(f)(2)(iii). However, any excess attributable to a taxpayer exceeding the limitation based on modified adjusted gross income is not treated as an excessive payment to an eligible entity.

F. Requirement To File Return

Proposed §§ 1.25E-3(h) and 1.30D-5(g) would provide that an electing taxpayer must file an income tax return for the taxable year in which the vehicle transfer election is made that reports such election. Specifically, the electing taxpayer must file a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor form, and any other additional forms, schedules, or statements prescribed by the Commissioner for purposes of making a return to report tax under chapter 1. The electing taxpayer must include the VIN of the clean vehicle on the return of tax for the taxable year in which the vehicle transfer election is made, as provided for in forms and instructions.

G. Two Vehicle Transfer Elections per Year

Proposed §§ 1.25E-3(i) and 1.30D-5(h) would provide that a taxpayer may make no more than two transfer elections per taxable year, consisting of elections either for two section 30D credits or for one section 30D credit and one section 25E credit. In the case of a joint return, each spouse may make two transfer elections per taxable year, for a maximum of four vehicle transfer elections in a taxable year. This proposed rule is intended to ensure program integrity by limiting transfer elections to vehicle sales that appear to be for legitimate personal or individual use. The section 30D credit may only be transferred for clean vehicles that are for predominantly personal use, and a taxpayer transferring the section 25E credit must be an individual. Moreover, a qualified buyer of a previously-owned clean vehicle for the section 25E credit must not have been allowed a prior section 25E credit for a sale in the prior three years. The Treasury Department and the IRS believe that it is unlikely that an individual who meets the modified adjusted gross income limitations would purchase more than two clean vehicles in a taxable year for legitimate personal or individual use. Accordingly, in light of the unique compliance challenges posed by advance payments of the section 30D and section 25E credits and pursuant to the broad authority conferred by section 30D(g)(1) and section 25E(f), the proposed regulations would limit taxpayers to two vehicle transfer elections in a taxable year.

V. Proposed Regulations Under Section 6213(g)(2)

A. Omission of a Correct Vehicle Identification Number

The IRA added three new definitions to the exclusive list of “mathematical or clerical errors” in section 6213(g)(2). These new definitions are set out in sections 6213(g)(2)(T), (U), and (V). Section 6213(g)(2)(T) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 30D(f)(9) (relating to credit for new clean vehicles) to be included on a return; section 6213(g)(2)(U) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 25E(d) (relating to credit for previously-owned clean vehicles) to be included on a return; and section 6213(g)(2)(V) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 45W(e) (relating to commercial clean vehicle credit) to be included on a return.

The flush language added by Congress in 1998 to clarify the meaning of a correct TIN does not provide the clarification that is necessary to determine the meaning of “an omission of a correct vehicle identification number” under sections 6213(g)(2)(T) through (V). Accordingly, proposed § 301.6213-2 would provide rules for determining when the IRS is authorized to use math error authority to make a summary assessment when there has been an “omission of a correct vehicle identification number” on a taxpayer’s return when claiming or electing to transfer the credits under sections 30D, 25E and 45W.

Proposed § 301.6213-2 would describe when taxpayers will be treated as having omitted a correct VIN required to be included on a taxpayer’s return under section 30D, section 25E, and section 45W. Under proposed § 301.6213-2(b), a taxpayer would be treated as having omitted a correct VIN (1) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is not included on the tax return; (2) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is included on the tax return but is not a VIN for an eligible vehicle under section 30D(d)(1), 25E(c)(1), or 45W(c); (3) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is included on the tax return but the taxpayer claims the credit for a year in which the vehicle is not eligible for the credit; (4) when the VIN required to be reported under section 30D(f)(9) is included on the tax return but differs

from the VIN reported to the Secretary under section 30D(d)(1)(H) for the taxpayer who was issued the report; and (5) when the VIN required to be reported under section 25E(d) is included on the tax return but differs from the VIN reported to the Secretary under section 25E(c)(1)(D)(i) for the taxpayer who was issued the report.

B. Failure To Include the Vehicle Identification Number on the Tax Return

A taxpayer claiming a credit with respect to a new clean vehicle under section 30D, a previously-owned clean vehicle under section 25E(a), or a commercial clean vehicle under section 45W(a), is required under sections 30D(f)(9), 25E(d), or 45W(e), whichever is applicable, to report the VIN of such vehicle on the taxpayer's return. Under proposed § 301.6213-2, a taxpayer would be treated as having omitted a correct VIN required under sections 30D(f)(9), 25E(d), and 45W(e), if the VIN is missing from the taxpayer's return or the number reported on the return is an invalid VIN. A VIN is a unique identifying code for a specific automobile. Modern VINs comprise 17 characters (digits and capital letters) that act as a unique identifier for the vehicle and displays the car's unique features, specifications, and manufacturer. An invalid VIN is a number that does not match any existing VIN reported by a qualified manufacturer. Under the proposed regulation, if the IRS determines that a taxpayer has failed to include the VIN with the tax return for the taxable year because the VIN is missing or invalid, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under either section 6213(g)(2)(T), (U), or (V), whichever is applicable.

C. Vehicle Identification Number Included on the Return Is for Ineligible Vehicle

The credit under sections 30D, 25E, or 45W is available for vehicles that qualify as a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c). Under proposed § 301.6213-2, a taxpayer would be treated as having omitted a correct VIN required under sections 30D(f)(9), 25E(d), or 45W(e), if the VIN included on the taxpayer's return is not that of a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c). Under the

proposed regulation, if the IRS determines that a taxpayer reported a VIN but the VIN is not for a vehicle described in sections 30D(d)(1), 25E(c)(1), or 45W(c), the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T), (U), or (V), whichever is applicable.

D. Vehicle Identification Number Is Included on the Return but Is Claimed for a Year in Which the Vehicle Is Not Eligible for the Credit

The credit under section 30D is available for each new clean vehicle placed in service by the taxpayer during the taxable year if the new clean vehicle meets the critical mineral and battery component requirements applicable for that year, as defined in sections 30D(e)(1) and (2). Beginning in 2023, the percentage of the value of the applicable critical minerals contained in the vehicle's battery, as well as the percentage of the value of the components contained in the vehicle's battery that were manufactured or assembled in North America, must equal or exceed the applicable percentages identified in sections 30D(e)(1) or (2) for the relevant year. If the vehicle does not meet at least one of the applicable percentage requirements for critical minerals and battery components for the specified year in which it is placed in service, the vehicle is ineligible for the section 30D credit for the claimed year. Therefore, a VIN reported on a taxpayer's return that does not meet the section 30D(e)(1) or (2) requirements for the applicable year cannot be a correct VIN under section 30D.

The credits under sections 30D, 25E, and 45W are available for vehicles that qualify as a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c) for the taxable year the vehicle is placed in service. If a taxpayer claims the credit under sections 30D, 25E, or 45W, whichever is applicable, for a year other than the year that the vehicle was placed in service, the vehicle is ineligible for the credit for the claimed year. Therefore, a VIN reported on a taxpayer's return for a vehicle that was not placed in service for the year the taxpayer claims the credit cannot be a correct VIN under sections 30D, 25E or 45W. Under proposed § 301.6213-2(b)(3), a taxpayer would be treated as having omitted a correct VIN required under section 30D(f)(9) if the VIN included on the tax return is for a vehicle that is not eligible for such credit under section 30D(e)(1)

or (2) in the taxable year that the taxpayer claims the credit, if the taxpayer claims the credit under section 30D, 25E, or 45W for a year other than the year that the vehicle was placed in service, or if the taxpayer claims a credit under section 25E for a previously-owned clean vehicle with a model year that is not at least two model years earlier than the calendar year in which such vehicle is acquired. Under the proposed regulation, if the IRS determines the taxpayer omitted a correct VIN required under section 30D(f)(9) because the VIN included on the tax return is for a vehicle that is not eligible for such credit under section 30D(e)(1) or (2) in the taxable year that the taxpayer claims the credit, or if the taxpayer claims the credit under section 30D, 25E, or 45W for a year other than the year that the vehicle was placed in service, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T), (U), or (V), whichever is applicable.

E. Vehicle Identification Number Is Included on the Return but Does Not Match the Vehicle Identification Number Included in the Section 30D(d)(1)(H) Seller Report for a Particular Taxpayer

Section 30D(d)(1)(H) requires the person who sells a new clean vehicle to the taxpayer to furnish a report to the taxpayer and to the Secretary that contains (i) the name and TIN of the taxpayer, (ii) the VIN of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number, (iii) the battery capacity of the vehicle, (iv) verification that original use of the vehicle commences with the taxpayer, (v) the maximum credit under section 30D allowable to the taxpayer with respect to the vehicle, and (vi) in the case of a taxpayer who makes a vehicle transfer election, any amount described in section 30D(g)(2)(C) that was paid to such taxpayer. These requirements for the seller report reflect that it is a fundamental reporting requirement that the VIN for each vehicle eligible for the credit be linked to a particular taxpayer's TIN. A VIN reported on a taxpayer's return by anyone other than the reported taxpayer's TIN cannot, therefore, be a correct VIN for the taxpayer claiming the section 30D credit.

To reflect this TIN/VIN linkage and ensure that only the taxpayer who purchased the vehicle is able to claim the VIN for the vehicle eligible for the section 30D credit, proposed

§ 301.6213–2(b)(4) would provide that a taxpayer is treated as having omitted a correct VIN on a tax return as required under section 30D(f)(9) if the VIN on the tax return does not match the VIN included in the seller report under section 30D(d)(1)(H) for the taxpayer claiming the credit. Under the proposed regulation, if the IRS determines that a taxpayer reported a VIN but the VIN claimed on the taxpayer's return is not for a vehicle that was reported to the IRS and the taxpayer on the section 30D(d)(1)(H) report for that taxpayer, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T).

F. Vehicle Identification Number Is Included on the Return but Does Not Match the Vehicle Identification Number Included in the Section 25E(c)(1)(D)(i) Seller Report for a Particular Taxpayer

Section 25E(c)(1)(D)(i) requires the person who sells a previously-owned clean vehicle to the taxpayer to furnish a report to the taxpayer and to the Secretary that meets the requirements of section 30D(d)(1)(H) (except for clause (iv) thereof). Just like the requirements for the seller report for a new clean vehicle, the requirements for the seller's previously-owned clean vehicle report reflect a fundamental linkage between the VIN for each vehicle eligible for the credit and a particular taxpayer's TIN. For the same reasons listed in section V.E of this Explanation of Provisions, a VIN reported on a taxpayer's return by anyone other than the reported taxpayer's TIN cannot, therefore, be a correct VIN for the taxpayer claiming the section 25E credit.

To reflect this TIN/VIN linkage and ensure that only the taxpayer who purchased the vehicle is able to claim the VIN for the vehicle eligible for the section 25E credit, proposed § 301.6213–2(b)(5) would provide that a taxpayer is treated as having omitted a correct VIN on a tax return as required under section 25E(d) if the VIN on the tax return does not match the VIN included in the seller report under section 25E(c)(1)(D)(i) for a taxpayer claiming the credit. Under the proposed regulation, if the IRS determines that a taxpayer included a VIN on a tax return but the VIN claimed on the taxpayer's return is not for a vehicle that was reported to the IRS and the taxpayer under sections 25E(c)(1)(D)(i) for that taxpayer, the IRS would be authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(U).

VI. Severability

If any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Proposed Applicability Dates

Except as described in the following paragraph, these regulations are generally proposed to apply to new clean vehicles and previously-owned clean vehicles placed in service in taxable years beginning after October 10, 2023.

Proposed §§ 1.25E–3, 1.30D–5, and 301.6213–2 are proposed to apply to taxable years beginning after December 31, 2023. The applicability date of proposed §§ 1.25E–3 and 1.30D–5 would align with the applicability date of the transfer provisions of the section 25E or section 30D credit, which apply to vehicles acquired or placed in service, respectively, after December 31, 2023. Proposed § 301.6213–2 describes the exercise of math error authority with respect to omission of a correct VIN, which relates in part to seller reporting. Application of this proposed rule to taxable years beginning after December 31, 2023, would align with the commencement of the electronic submission of seller reporting to improve administration of the section 25E and section 30D credits.

Effect on Other Documents

This notice of proposed rulemaking modifies proposed §§ 1.30D–2 and 1.30D–4 of the April 2023 proposed regulations.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed §§ 1.25E–3 and 1.30D–5 regarding vehicle transfer elections will be reflected in the PRA Submissions associated with Revenue Procedure 2023–33. The IRS is seeking OMB approval and requesting a new OMB

control number for Revenue Procedure 2023–33. These proposed regulations do not alter previously accounted for information collection requirements and do not create new collection requirements. OMB Control Number 1545–2137 covers Form 8936 and Form 8936–A regarding electric vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022–42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the Secretary to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component certification requirements in section 30D(e)(1)(A) and (2)(A). In addition, Revenue Procedure 2022–42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022–42 are described in that document and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545–2137.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of a significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both

the number of entities affected and the economic impact on small entities.

A. Need for and Objectives of the Rule

The proposed regulations would provide the eligibility rules and key definitions regarding the section 25E credit to allow taxpayers to know whether their purchase of a used vehicle is eligible for the section 25E credit. In addition, the proposed regulations would provide rules regarding the recapture authority under sections 30D(f)(5) and 25E(e), so that taxpayers and the IRS have clear rules regarding when a clean vehicle may cease being eligible property for purposes of the section 25E and section 30D credits. Further, the proposed regulations would provide rules regarding the meaning of the omission of a correct VIN for purposes of math error authority as described in section 6213(g)(2). Clear rules regarding the exercise of math error authority will provide for efficient and fair tax administration.

The proposed regulations would provide guidance for purposes of taxpayers electing to transfer vehicle credits under sections 25E(f) and 30D(g) to eligible entities and for eligible entities participating in the advance payment program with respect to those transferred credits. The proposed rules would provide rules regarding the process for taxpayers to elect to transfer the credit and for eligible entities to register and receive advance payments from the IRS and rules regarding the Federal income tax treatment of the vehicle transfer election, including recapture and excessive payments. The proposed rules regarding the vehicle transfer election ensure certainty regarding the consequences of the transfer election, decrease the risk of fraud, and expedite the process by which an eligible entity may receive an advance payment under section 25E(f) or 30D(g).

The proposed rules are expected to encourage taxpayers to increase the placing in service of new and previously-owned clean vehicles. Thus, the Treasury Department and the IRS intend and expect that the proposed rules will deliver benefits across the economy and environment that will beneficially impact various industries, including clean vehicle manufacturers and dealers.

B. Affected Small Entities

The Small Business Administration estimates in its 2023 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these proposed regulations does not depend

on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, these rules may affect a variety of different businesses across several different industries, but will primarily affect dealers of new and previously-owned clean vehicles who would like to be eligible entities to receive a transferred credit from the buyers of a clean vehicle. The Treasury Department and the IRS currently estimate the number of dealers of new clean vehicles to be approximately 16,000, and the number of dealers of previously-owned clean vehicles to be approximately 36,000.

Of the estimated 16,000 dealers of new clean vehicles, we estimate that 10,000 will have receipts in excess of \$25 million; 3,000 will have receipts between \$10-\$25 million; 1,000 will have receipts between \$5-\$10 million, and 2,000 will have receipts under \$5 million. Of the estimated 36,000 dealers of previously-owned clean vehicles, we estimate that 500 will have receipts in excess of \$25 million; 1,500 will have receipts between \$10-\$25 million; 2,000 will have receipts between \$5-\$10 million, and 32,000 will have receipts under \$5 million.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when participation in the election to transfer credits under sections 25E(f) and 30D(g) commences.

1. Impact of the Rules

The recordkeeping and reporting requirements would increase for taxpayers who elect to transfer the section 25E or 30D credit to an eligible entity. In addition, the recordkeeping and reporting requirements would increase for dealers who seek to qualify as eligible entities and participate in the advance payment program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the PRA section of the preamble. The Treasury Department and IRS estimate that, based on the total of 52,000 dealers of new (16,000) and previously-owned (36,000) clean vehicles, it will take approximately one hour to register as entities eligible to receive advance payments of credits under sections 25E and 30D, for a total of 52,000 hours total. The Treasury Department and IRS further estimate that there are

approximately 950,000 taxpayers who will purchase new clean vehicles and 28,750 taxpayers who will purchase previously-owned clean vehicles who will elect to transfer their respective credits to the eligible entity, for a total of 978,750 elections annually. The Treasury Department and IRS estimate each election will take approximately 15 minutes to complete, for a total burden of approximately 244,688 hours per year.

2. Alternatives Considered

The Treasury Department and the IRS considered various alternatives in promulgating these proposed regulations. Significant alternatives considered include: (1) the sale price definition in proposed § 1.25E-1(b)(9); (2) the first transfer rule described in proposed § 1.25E-1(b)(8); (3) the recapture rules provided in proposed §§ 1.25E-2(c) and 1.30D-4(f), and (4) the dealer registration requirements provided in proposed §§ 1.25E-3(b) and 1.30D-5(b).

Regarding the sale price definition in proposed § 1.25E-1(b)(9), the Treasury Department and the IRS considered the appropriate scope of the definition and how the definition of sale price should be consistent with or diverge from the definition of manufacturer's suggested retail price for purposes of section 30D(f)(11). The definition of manufacturer's suggested retail price in proposed § 1.30D-2(c) of the April 2023 proposed regulations refers to a statutory definition in 15 U.S.C. 1232 that is used for purposes of vehicle labeling on the vehicle window sticker. That proposed definition includes optional accessories or items included by the manufacturer at the time of delivery to the dealer but excludes delivery charges to the dealer. For used vehicles, however, there are not similar vehicle labeling standards that provide a standard for defining sales price. In addition, in a used vehicle sale the dealer and buyer may negotiate to characterize a portion of the sale price as a separately stated fee or charge (other than those required by law) to avoid the section 25E sales price cap of \$25,000. To prevent this type of recharacterization, proposed § 1.25E-1(b)(9) defines sale price to mean the total sale price agreed upon by the buyer and the dealer, including any delivery charges. This definition specifically excludes separately-stated taxes and fees required by State or local law, since such taxes and fees are not subject to negotiation or recharacterization by the dealer and buyer.

The Treasury Department and the IRS considered various alternatives to the

first transfer rule described in proposed § 1.25E-1(b)(8). This rule is necessary to determine whether a sale of a previously-owned clean vehicle is a qualified sale pursuant to section 25E(c)(2). One of the requirements to be a qualified sale is that the sale be the first transfer to a qualified buyer since the enactment of section 25E other than to the person with whom the original use of the vehicle commenced. However, some of the characteristics of being a qualified buyer are unknowable to the dealer and the buyer in a subsequent sale, including that a qualified buyer be an individual, not be a dependent, and not have claimed the section 25E credit in the prior three years. As a result, if a previously-owned clean vehicle is transferred more than once after the date of enactment of section 25E, there is no way for the parties after the first transfer to know if the first transfer was to a qualified buyer. Because the IRS may have access to some information necessary to determine whether a first transfer was to a qualified buyer, the Treasury Department and the IRS considered alternatives to the first transfer rule such as a look-up tool regarding prior claims of the section 25E credit for a particular vehicle or information regarding prior vehicle purchasers. However, disclosure of this information raises significant confidentiality issues. Accordingly, the Treasury Department and the IRS have proposed the first transfer rule to provide certainty to buyers and dealers as to which transfer of a previously-owned clean vehicle is the first transfer and will qualify for the section 25E credit by relying on the vehicle history.

The Treasury Department and the IRS considered alternatives to the recapture rules provided in proposed §§ 1.25E-2(c) and 1.30D-4(f). Given the increased availability and benefits of the section 30D credit and the new section 25E credit when the credit can be transferred to an eligible entity and is not limited by the taxpayer's tax liability, the Treasury Department and the IRS determined it was necessary to provide rules regarding when the value of the clean vehicle credits can be recaptured. The Treasury Department and the IRS also considered the appropriate length of time within which a return or resale of a vehicle would make the taxpayer ineligible for the credit. Longer and shorter periods of time were considered. Based on industry standard return policies, including money back guarantees, the Treasury Department and the IRS determined that it was appropriate to deny the benefit of the credit if the credit was returned within

30 days. In addition, the Treasury Department and the IRS determined it was reasonable to assume an intent to resell the vehicle, making the purchase of the vehicle ineligible, if the vehicle was resold within 30 days.

Finally, with respect to the dealer registration requirements provided in proposed §§ 1.25E-3(b) and 1.30D-5(b), the Treasury Department and the IRS considered various processes by which a seller could become an eligible entity and participate in the advance payment program. The Treasury Department and the IRS considered a process that did not require submission of a significant amount of information prior to the dealer becoming an eligible entity, but such an approach could require more back-end compliance. To ensure efficient tax administration and reduce fraud, the Treasury Department and the IRS determined that an up-front, electronic registration process was necessary for the IRS to effectively review and validate eligible entity status. To ensure efficient tax administration and reduce fraud, the Treasury Department and the IRS determined that an up-front, electronic registration process was necessary for the IRS to effectively review and validate eligible entity status. In addition, the Treasury Department and the IRS determined that dealers must submit identity information and attestations regarding their participation in the advance payment program to ensure program integrity. Finally, the Treasury Department and the IRS determined that dealer tax compliance was necessary to ensure that advance payments are being paid only to compliant dealers.

3. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed rules would merely provide requirements, procedures, and definitions related to the clean vehicle transfer election programs for sections 25E and 30D. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.25E–1 through 1.25E–3 and 1.30D–5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.25E–1 through 1.25E–3 also issued under 26 U.S.C. 25E.

* * * * *

Section 1.30D–5 also issued under 26 U.S.C. 30D.

* * * * *

■ **Par 2.** Sections 1.25E–0 through 1.25E–3 are added to read as follows:

Sec.

* * * * *

1.25E–0 Table of contents.

1.25E–1 Credit for previously-owned clean vehicles.

1.25E–2 Special rules.

1.25E–3 Transfer of credit.

* * * * *

§ 1.25E–0 Table of contents.

This section lists the captions contained in §§ 1.25E–1 through 1.25E–3.

§ 1.25E–1 Credit for previously-owned clean vehicles.

- (a) In general.
- (b) Definitions.
- (1) Dealer.
- (2) Incentive.
- (3) Modified adjusted gross income.
- (4) Placed in service.
- (5) Previously-owned clean vehicle.
- (6) Qualified buyer.
- (7) Qualified manufacturer.
- (8) Qualified sale.
- (i) In general.
- (ii) First transfer rule.
- (9) Sale price.
- (10) Section 25E regulations.
- (11) Seller report.
- (c) Limitation based on modified adjusted gross income.
- (1) In general.
- (2) Threshold amount.
- (3) Special rule for change in filing status.
- (d) Limitation on multiple owners.
- (1) In general.
- (2) Seller reporting.
- (e) Examples.
- (1) Example 1.
- (2) Example 2.
- (3) Example 3.
- (4) Example 4.
- (5) Example 5.
- (6) Example 6.
- (f) Severability.
- (g) Applicability date.

§ 1.25E–2 Special rules.

- (a) In general.
- (b) No double benefit.
- (1) In general.
- (2) Interaction of section 30D and section 25E no double benefit rules.
- (c) Recapture.
- (1) In general.
- (i) Cancelled sale.
- (ii) Vehicle return.
- (iii) Resale.
- (iv) Other returns and resales.
- (2) Recapture rules in the case of a vehicle transfer election.
- (3) Example.
- (d) Branded title.
- (e) Seller registration.
- (f) Requirement to file a complete income tax return.
- (g) Severability.
- (h) Applicability date.

§ 1.25E–3 Transfer of credit.

- (a) In general.
- (b) Definitions.
- (1) Advance payment program.
- (2) Dealer.
- (3) Dealer tax non-compliance.
- (4) Electing taxpayer.
- (5) Eligible entity.
- (6) Registered dealer.
- (7) Time of sale.
- (8) Vehicle transfer election.
- (c) Dealer registration.

- (1) In general.
- (2) Effect of dealer tax non-compliance.
- (d) Vehicle transfer election by electing taxpayer to transfer credit.
- (e) Federal income tax consequences of the vehicle transfer election.
- (1) Treatment of electing taxpayer.
- (2) Treatment of eligible entity.
- (3) Form of payment from eligible entity to electing taxpayer.
- (4) Application of certain other requirements.
- (5) Examples.
- (f) Advance payments received by eligible entities.
- (1) In general.
- (2) Requirements for a registered dealer to become an eligible entity.
- (3) Suspension of registered dealer eligibility.
- (4) Revocation of registered dealer eligibility.
- (g) Increase in tax.
- (1) Recapture where taxpayer exceeds modified adjusted gross income limitation.
- (2) Excessive payments.
- (i) In general.
- (ii) Reasonable cause.
- (iii) Excessive payment defined.
- (iv) Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.
- (3) Example.
- (h) Requirement of return.
- (1) In general.
- (2) Income tax return.
- (i) Two vehicle transfer elections per year.
- (j) Severability.
- (k) Applicability date.

§ 1.25E–1 Credit for previously-owned clean vehicles.

(a) *In general.* Section 25E(a) of the Internal Revenue Code (Code) allows as a credit against the tax imposed by chapter 1 of the Code (chapter 1) for the taxable year of a taxpayer an amount equal to the lesser of \$4,000, or the amount equal to 30 percent of the sale price of a previously-owned clean vehicle, when that previously-owned clean vehicle is placed in service during the taxable year by a taxpayer that acquired the previously-owned clean vehicle in a qualified sale in which that taxpayer is a qualified buyer. This section provides definitions and generally applicable rules that apply for purposes of determining the credit under section 25E and the section 25E regulations (as defined in paragraph (b)(10) of this section) (section 25E credit). Section 1.25E–2 provides special rules under section 25E(e). Section 1.25E–3 provides rules under section 25E(f).

(b) *Definitions.* The following definitions apply for purposes of the section 25E regulations.

(1) *Dealer.* Dealer has the meaning provided in section 25E(c)(2)(A) by reference to section 30D(g)(8), except that the term does not include persons

licensed solely by a territory of the United States, and includes a dealer licensed in any jurisdiction described in section 30D(g)(8) (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which its licensed.

(2) *Incentive.* For purposes of the definition of *sale price* in paragraph (b)(9) of this section, *incentive* means any reduction in total sale price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and § 1.25E-3.

(3) *Modified adjusted gross income.* *Modified adjusted gross income* has the meaning provided in section 25E(b)(3).

(4) *Placed in service.* A previously-owned clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(5) *Previously-owned clean vehicle.* *Previously-owned clean vehicle* has the meaning provided in section 25E(c)(1).

(6) *Qualified buyer.* *Qualified buyer* means, with respect to a sale of a motor vehicle, a taxpayer—

- (i) Who is an individual;
- (ii) Who purchases such vehicle for use and not for resale;
- (iii) With respect to whom no deduction is allowable to another taxpayer under section 151 of the Code; and

(iv) Who has not been allowed a credit under section 25E and this section for any sale occurring during the period beginning three calendar years before the date of the sale of the vehicle and ending on the date of the sale.

(7) *Qualified manufacturer.* *Qualified manufacturer* has the meaning provided in section 30D(d)(3).

(8) *Qualified sale*—(i) *In general.* *Qualified sale* means a sale of a motor vehicle—

- (A) By a dealer (as defined in paragraph (b)(1) of this section);
- (B) For a sale price that does not exceed \$25,000; and
- (C) That is the first transfer of the motor vehicle after August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced.

(ii) *First transfer rule.* To be a *qualified sale*, a transfer must be the first transfer since August 16, 2022, as shown by vehicle history, of a previously-owned clean vehicle after the sale to the person with whom the original use of such vehicle commenced. For purposes of this

paragraph (b)(8)(ii), a transfer to or between dealers is ignored. The taxpayer may rely on the dealer's provision of the vehicle history in determining whether the first transfer rule in this paragraph (b)(8)(ii) is satisfied.

(9) *Sale price.* The *sale price* of a previously-owned clean vehicle means the total sale price agreed upon by the buyer and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives, but excluding separately-stated taxes and fees required by State or local law. The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value.

(10) *Section 25E regulations.* Section 25E regulations means this section and §§ 1.25E-2 and 1.25E-3.

(11) *Seller report.* *Seller report* means the report described in section 25E(c)(1)(D)(i) by reference to section 30D(d)(1)(H) and provided by the seller of a vehicle to the taxpayer and to the IRS electronically in the manner provided in, and containing the information described in, guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter). The seller report must be provided to the IRS electronically. The term seller report does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

(c) *Limitation based on modified adjusted gross income*—(1) *In general.* No section 25E credit is allowed for any taxable year if—

- (i) The lesser of—
 - (A) The modified adjusted gross income of the taxpayer for such taxable year; or
 - (B) The modified adjusted gross income of the taxpayer for the preceding taxable year; exceeds
- (ii) The threshold amount.

(2) *Threshold amount.* For purposes of paragraph (c)(1) of this section, the threshold amount is determined based on the taxpayer's return filing status for the taxable year, as set forth in paragraphs (c)(2)(i) through (iii) of this section—

(i) In the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is \$150,000.

(ii) In the case of a head of household (as defined in section 2(b) of the Code), the threshold amount is \$112,500.

(iii) In the case of a taxpayer not described in paragraph (c)(2)(i) or (ii) of this section, the threshold amount is \$75,000.

(3) *Special rule for change in filing status.* If the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, then the taxpayer satisfies the limitation described in paragraph (c)(1) of this section if the taxpayer's modified adjusted gross income does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(d) *Limitation on multiple owners*—(1) *In general.* The amount of the section 25E credit attributable to a previously-owned clean vehicle may be claimed on only one tax return. In the event a previously-owned clean vehicle is placed in service by multiple owners (for example, in the case of married individuals filing separate returns), no allocation or proration of the section 25E credit is available.

(2) *Seller reporting.* The name and taxpayer identification number of the vehicle owner claiming the section 25E credit must be listed on the seller report pursuant to sections 25E(c)(1)(D)(i) and 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller report.

(e) *Examples.* The following examples illustrate the application of the rules in this section.

(1) *Example 1: First transfer since enactment of section 25E.* A two-year-old qualifying vehicle has been sold as used prior to August 16, 2022 (the date of enactment of section 25E). The next sale of the vehicle occurs on September 1, 2023, for a sale price below \$25,000 from a dealer to a qualified buyer whose modified adjusted gross income does not exceed the limitation described in paragraph (c) of this section. This sale is a qualified sale pursuant to paragraph (b)(8) of this section and, therefore, the buyer will qualify for the section 25E credit.

(2) *Example 2: Multiple transfers since enactment of section 25E.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, for a sale price above \$25,000. The first sale of the used vehicle would not qualify for a credit under section 25E because the sale price exceeded \$25,000. The second sale is not a qualified sale because it was not the first transfer after enactment of section 25E.

(3) *Example 3: First buyer is a commercial buyer.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, to a partnership, for a sale price below \$25,000. The first sale would not qualify for a credit under

section 25E because the buyer is a partnership, not an individual. The second sale is not a qualified sale because it is not the first transfer after enactment of section 25E.

(4) *Example 4: First buyer exceeds the modified adjusted gross income limits.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, and was sold to a buyer whose modified adjusted gross income exceeds the limitation described in paragraph (c) of this section. Subsequently, the vehicle is sold again for less than \$25,000 to a qualified buyer whose modified adjusted gross income is below the limitation. The first sale would not qualify for a credit under section 25E because the buyer's modified adjusted gross income exceeds the limitation, and the second sale is not a qualified sale because it is not the first transfer after the enactment of section 25E.

(5) *Example 5: First buyer elects to not take the section 25E credit.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurred after August 16, 2022, and was sold to a qualified buyer for a sale price below \$25,000, but that first buyer elects to not claim the section 25E credit. The second sale is not a qualified sale because it is not the first transfer after the enactment of section 25E.

(f) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(g) *Applicability date.* This section applies to previously-owned clean vehicles placed in service in taxable years beginning after October 10, 2023.

§ 1.25E-2 Special rules.

(a) *In general.* This section provides additional guidance under section 25E(e) of the Internal Revenue Code (Code), which incorporates rules similar to the rules of section 30D(f) other than section 30D(f)(10) or 30D(f)(11). Unless otherwise provided in this section, the rules of section 30D(f) apply to section 25E and the section 25E regulations (as defined in § 1.25E-1(b)(10)) in the same manner by replacing, if applicable, any reference to section 30D or the section 30D credit with a reference to section 25E or the section 25E credit.

(b) *No double benefit—(1) In general.* Under sections 25E(e) and 30D(f)(2), the amount of any deduction or other credit allowable under chapter 1 of the Code (chapter 1) for a vehicle for which a

section 25E credit is allowable must be reduced by the amount of the section 25E credit allowed for such vehicle.

(2) *Interaction of section 30D and section 25E no double benefit rules.* A section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a section 25E credit under section 25E is allowable for that vehicle does not reduce the amount allowable under section 25E.

(c) *Recapture—(1) In general.* This paragraph (c) provides rules regarding the recapture of the section 25E credit.

(i) *Cancelled sale.* If the sale of a vehicle between the taxpayer and dealer is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as not having occurred (and no transfer is considered to have occurred by reason of the cancelled sale), and the vehicle will, therefore, still qualify for the section 25E credit upon a subsequent sale meeting the requirements of section 25E and the section 25E regulations;

(C) The seller report (as defined in § 1.25E-1(b)(11)) must be rescinded by the seller in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter); and

(D) The taxpayer cannot make an election to transfer the credit under section 25E(f) and § 1.25E-3.

(ii) *Vehicle return.* If a taxpayer returns a vehicle to the dealer within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as having occurred (and a transfer is therefore considered as having occurred by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale, unless the vehicle history does not reflect the prior sale and return; if the vehicle history does not reflect the prior sale and return, the vehicle remains eligible for the section 25E credit under the first transfer rule described in § 1.25E-1(b)(8)(ii);

(C) The seller report (as defined in § 1.25E-1(b)(11)) must be updated by the seller; and

(D) Any vehicle transfer election made pursuant to section 25E(f) and § 1.25E-3, if applicable, will be treated as nullified and any advance payment made pursuant to section 25E(f) and § 1.25E-3, if applicable, will be collected from the eligible entity as an

excessive payment pursuant to § 1.25E-3.

(iii) *Resale.* If a taxpayer resells the vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated as having purchased the previously-owned clean vehicle with the intent to resell, and—

(A) The taxpayer may not claim the section 25E credit with respect to the vehicle;

(B) The sale to the taxpayer will be treated as occurring (and a transfer is therefore considered as occurring by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale;

(C) The seller report (as defined in § 1.25E-1(b)(11)) will not be updated; and

(D) Any vehicle transfer election made pursuant to section 25E(f) and § 1.25E-3, if applicable, will remain in effect and any advance payment made pursuant to section 25E(f) and § 1.25E-3 will not be collected from the eligible entity; and

(E) The value of the transferred credit will be collected from the taxpayer.

(iv) *Other returns and resales.* In the case of a vehicle return not described in paragraph (c)(1)(ii) or a resale not described in paragraph (c)(1)(iii), the vehicle will no longer be eligible for the section 25E credit upon a subsequent sale.

(2) *Recapture rules in the case of a vehicle transfer election.* For additional recapture rules that apply in the case of a vehicle transfer election, see § 1.25E-3(g)(1). For excessive payment rules that apply in the case where an advance payment is made to an eligible entity, see § 1.25E-3(g)(2).

(3) *Example: First buyer returns vehicle.* A two-year-old qualifying vehicle is sold to a qualified buyer after August 16, 2022, for less than \$25,000, but the buyer returns the vehicle to the dealer within 30 days and does not claim the credit under section 25E. The vehicle history reflects the first used sale and return. A second sale of the used vehicle is not a qualified sale because the first sale occurred after the enactment of section 25E, regardless of whether the first buyer claimed the credit under section 25E.

(d) *Branded title.* A title to a previously-owned clean vehicle indicating that such vehicle has been damaged, or is otherwise a branded title, does not impact the vehicle's eligibility for a section 25E credit.

(e) *Seller registration.* A seller must register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see

§ 601.601(d)(2)(ii)(a) of this chapter) for purposes of filing seller reports.

(f) *Requirement to file a complete income tax return.* No section 25E credit is allowed unless the taxpayer claiming such credit files an income tax return for the taxable year in which the previously-owned clean vehicle is placed in service. For purpose of this paragraph (f), the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(g) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(h) *Applicability date.* This section applies to previously-owned clean vehicles placed in service in taxable years beginning after [DATE OF PUBLICATION OF FINAL RULE].

§ 1.25E-3 Transfer of credit.

(a) *In general.* This section provides a credit transfer program under section 25E(f).

(b) *Definitions.* This paragraph (b) provides definitions that apply for purposes of section 25E(f) and this section.

(1) *Advance payment program.* *Advance payment program* means the program described in paragraph (f)(1) of this section.

(2) *Dealer.* *Dealer* has the meaning provided in § 1.25-1(b)(1).

(3) *Dealer tax compliance.* *Dealer tax compliance* means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax purposes, and all Federal tax, penalties, and interest due of the dealer as of the time of sale have been paid. A dealer that has entered into an installment agreement with the IRS for which a dealer is current on its obligations is treated as being in dealer tax compliance.

(4) *Electing taxpayer.* *Electing taxpayer* means the individual who purchases the previously-owned clean vehicle and elects to transfer the section 25E credit that would otherwise be allowable to such individual to an eligible entity pursuant to section 25E(f) and the rules of this section. A taxpayer

is an electing taxpayer only if the taxpayer makes certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the Internal Revenue Bulletin, including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitations.

(5) *Eligible entity.* *Eligible entity* has the meaning provided in section 30D(g)(2) and paragraph (f)(2) of this section.

(6) *Registered dealer.* *Registered dealer* is a dealer that has completed registering with the IRS as provided in paragraph (c) of this section.

(7) *Time of sale.* *Time of sale* means the date the previously-owned clean vehicle is placed in service, as defined in § 1.25E-1(b)(4).

(8) *Vehicle transfer election.* *Vehicle transfer election* has the meaning provided in sections 25E(f) and 30D(g) and paragraph (d) of this section.

(c) *Dealer registration—(1) In general.* A dealer must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 25E(f) and paragraph (d) of this section.

(2) *Effect of dealer tax non-compliance.* If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, then the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance payment program (and, therefore, the dealer will not be eligible to receive transferred section 25E credits) until the compliance issue is resolved. The IRS will notify the dealer in writing that the dealer is not in dealer tax compliance, and the dealer will have the opportunity to address any failure through regular procedures. If the failure is corrected, the IRS will complete the dealer's registration for the advance payment program, and, provided all other requirements of this section are met, the dealer will then be allowed to participate in the advance payment program. Additional procedural guidance regarding this paragraph (c)(2) will be set forth in guidance published in the Internal Revenue Bulletin.

(d) *Vehicle transfer election by electing taxpayer to transfer credit.* For a previously-owned clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 25E(f) and this section to make a vehicle transfer election with respect to the vehicle, so

that the 25E credit with respect to the vehicle is allowed to the eligible entity specified in the vehicle transfer election (and not to the taxpayer) pursuant to the advance payment program described in paragraph (f) of this section. The electing taxpayer, as part of the vehicle transfer election, must transfer the entire amount of the section 25E credit that would otherwise be allowable to the electing taxpayer with respect to the vehicle, and the eligible entity specified in the vehicle transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the vehicle transfer election. A vehicle transfer election is made no later than at the time of sale in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter), and, once made the vehicle transfer election is irrevocable.

(e) *Federal income tax consequences of the vehicle transfer election—(1) Treatment of electing taxpayer.* In the case of a vehicle transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The amount of the section 25E credit that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) (by reason of section 25E(f) and paragraph (d) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture;

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) (by reason of 25E(f) and paragraph (d) of this section to an electing taxpayer pursuant to a vehicle transfer election is not includible in the gross income of the electing taxpayer; and

(iii) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25E(f) and paragraph (d) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is part of the electing taxpayer's basis in the previously-owned clean vehicle prior to the application of the basis reduction rule of section 30D(f)(1) that applies by reason of section 25E(e) and § 1.25E-2(a).

(2) *Treatment of eligible entity.* In the case of a vehicle transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the section 25E credit with respect to the previously-owned clean vehicle and

may receive an advance payment pursuant to section 30D(g)(7) (by reason of section 25(f)) and paragraph (f) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25(f)) and paragraph (d) of this section to an electing taxpayer is not deductible by the eligible entity; and

(v) The payment made by an eligible entity to the electing taxpayer under section 30D(g)(2)(C) (by reason of section 25(f)) and paragraph (d) of this section is treated as paid by the electing taxpayer to the eligible entity as part of the purchase price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized of the eligible entity under section 1001 of the Code and the regulations in this part under section 1001.

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 25E credit allowed that is transferred to the eligible entity;

(B) Such section 25E credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer.* The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (e)(1) and (2) of this section is the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for purchase of the previously-owned clean vehicle.

(4) *Application of certain other requirements.* In the case of a vehicle transfer election, the following additional rules apply—

(i) The requirements of section 30D(f)(1) (regarding basis reduction) and 30D(f)(2) (regarding no double benefit), by reason of section 25E(e), apply to the electing taxpayer as if the vehicle

transfer election were not made (so, for example, the electing taxpayer must reduce the taxpayer's basis in the vehicle by the amount of the section 25E credit, regardless of the vehicle transfer election).

(ii) Section 30D(f)(6) (regarding the election not to take the credit), by reason of section 25E(e), will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit).

(iii) Section 30D(f)(9) (regarding the vehicle identification number (VIN) requirement), by reason of section 25E(e), and section 25E(d) (regarding the VIN requirement) will be treated as satisfied if the eligible entity provides the VIN of such vehicle to the IRS in the form and manner set forth in guidance published in the Internal Revenue Bulletin.

(5) *Examples.* The following examples illustrate the rules under paragraph (e) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than value of the credit—(A) Facts.* A taxpayer, who is an individual, purchases a previously-owned clean vehicle from a dealer, which is a C corporation. The taxpayer satisfies the requirements to be an electing taxpayer and elects to transfer the section 25E credit to the dealer. The dealer is a registered dealer and satisfies the requirements to be an eligible entity. The sales price the vehicle is \$24,000. The section 25E credit otherwise allowable to the electing taxpayer is \$4,000. The eligible entity makes the payment required to be made to the electing taxpayer in the form of a cash payment of \$4,000. The electing taxpayer pays back the \$4,000 to the eligible entity and pays an additional \$20,000 as the purchase price of the vehicle. The electing taxpayer's regular tax liability for the year is less than \$4,000.

(B) *Analysis.* Under paragraph (e)(1) of this section, the electing taxpayer may transfer the credit even though the electing taxpayer's regular tax liability is less than \$4,000, and no amount of the credit will be recaptured from the taxpayer on the basis that the allowable credit exceeded their regular tax liability. The eligible entity's \$4,000 payment to the electing taxpayer is not included in the electing taxpayer's gross income, and the electing taxpayer's purchase price for the vehicle is \$24,000 (including both the \$4,000 payment and the additional \$20,000 purchase price paid), prior to the application of the basis reduction rule of section 30D(f)(1) (by reason of section 25E(e)). After application of the basis reduction, the electing taxpayer's basis in the vehicle

is \$20,000. The eligible entity is eligible to receive an advance payment of \$4,000 for the transferred section 25E credit as provided in section 30D(g)(7) (by reason of section 25E(f)) and paragraph (f) of this section. Under paragraph (d)(2) of this section, the eligible entity may receive the advance payment regardless of whether the eligible entity's regular tax liability is less than \$4,000. The advance payment is not treated as a credit toward the eligible entity's tax liability (if any), nor is it included in the eligible entity's gross income, the eligible entity's \$4,000 payment to the electing taxpayer is not deductible, and the eligible entity's amount realized is \$24,000 upon the sale of the vehicle (including both the \$4,000 payment and the additional \$20,000 purchase price of the vehicle).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer—(A) Facts.* The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that the eligible entity makes the payment to the electing taxpayer in the form of a reduction in the purchase price (rather than as a cash payment).

(B) *Analysis.* Paragraph (e)(3) of this section provides that the application of paragraphs (e)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in purchase price). Thus, the analysis is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership—(A) Facts.* The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that the dealer is a partnership.

(B) *Analysis.* The analysis as to the electing taxpayer is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*). Because the eligible entity is a partnership, paragraph (e)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership (and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax exempt income to the partnership for purposes of the Code.

(f) *Advance payments received by eligible entities—(1) In general.* An eligible entity may receive advance payments from the IRS corresponding to the amount of the section 25E credit for which an election was made by an electing taxpayer to transfer the credit to

the eligible entity pursuant to section 30D(g) (by reason of section 25E(f)) and paragraph (d) of this section before the eligible entity files its Federal income tax return for the taxable year that includes the taxable year with respect to which the vehicle transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive the section 25E credit transferred under section 25E(f) pursuant to paragraph (d) of this section. An eligible entity receiving an advance payment may not claim the section 25E credit on a Federal income tax return.

(2) *Requirements for a registered dealer to become an eligible entity.* A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment, by meeting the following requirements—

(i) The registered dealer submits all required registration information and is in dealer tax compliance.

(ii) The registered dealer retains information regarding the vehicle transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter).

(iii) The eligible entity meets any other requirements of section 25E(f) by reference to section 30D(g) and this section included in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter) or in forms and instructions.

(3) *Suspension of registered dealer eligibility.* A registered dealer may be suspended from the advance payment program pursuant to the procedures described in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter). Any decision made by the IRS relating to the suspension of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registered dealer eligibility.* A registered dealer's registration may be revoked pursuant to the procedures described in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is

available and the IRS provides the time and manner for such review.

(g) *Increase in tax—(1) Recapture where taxpayer exceeds modified adjusted gross income limitation.* If a taxpayer who elected to transfer the credit under section 25E(f) and this section has modified adjusted gross income that exceeds the limitation in section 25E(b), the income tax imposed on such taxpayer under chapter 1 of the Code (chapter 1) for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The taxpayer must reconcile such amounts on the tax return described in paragraph (h) of this section.

(2) *Excessive payments—(i) In general.* This paragraph (g)(2) provides rules under section 25E(f) by reference to section 30D(g)(7)(B), under which rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of:

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause.* The amount described in paragraph (g)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a vehicle returned to the eligible entity within 30 days of placing the vehicle in service for which a vehicle transfer election was made by the electing taxpayer, as described in § 1.25E-2(c)(1)(ii), the eligible entity will be treated as demonstrating reasonable cause.

(iii) *Excessive payment defined.* Excessive payment means an advance payment made—

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in paragraph (f)(2) of this section; or

(B) Except as provided in paragraph (g)(2)(iv) of this section, to an eligible entity with respect to a vehicle to the extent the payment exceeds the amount of the credit that, without application of section 25E(f) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.* Any excess described in paragraph (g)(2)(iii)(B) of this section due to the purchaser exceeding the limitation based on modified adjusted gross income provided in section 25E(b) is not an excessive payment. Instead, the value of the amount of the advance payment is recaptured from the purchaser under section 25E(e) and paragraph (g)(1) of this section.

(3) *Example.* This paragraph (g)(3) provides an example to illustrate the excessive payment rules provided in paragraph (g)(2) of this section.

(i) *Facts.* In 2024, D, a registered dealer, receives an advance payment of \$4,000 with respect to a credit transferred under section 25E(f)(1) and paragraph (d) of this section with respect to a previously-owned clean vehicle. In 2025, the IRS determines that the registered dealer was not an eligible entity with respect to the vehicle at the time of the receipt of the advance payment in 2024 because the registered dealer failed to satisfy a requirement in section 30D(g)(2) (applicable by reason of section 25E(f)) and paragraph (f)(2) of this section to be an eligible entity with respect to the vehicle. D is unable to show reasonable cause for the failure.

(ii) *Analysis.* Under paragraph (g)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (g)(2)(iii) of this section, the entire amount of the \$4,000 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) (applicable by reason of section 25E(f)) and paragraph (g)(2) of this section. Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by \$4,800 in 2025 (the taxable year of the IRS determination). This is comprised of the \$4,000 value of the credit plus the \$800 penalty, calculated as 20% penalty on such \$4,000 (20% * \$4,000 = \$800). This treatment applies regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(h) *Requirement of return—(1) In general.* An electing taxpayer that makes a vehicle transfer election must file an income tax return for the taxable year in which the vehicle transfer election is made and indicate such election on the return per instructions. The electing taxpayer must include the VIN of the

new clean vehicle on such return, as provided for in forms and instructions.

(2) *Income tax return.* For purposes of this section, the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, or any other forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(i) *Two vehicle transfer elections per year.* A taxpayer may make no more than two transfer elections per taxable year, consisting of either two section 30D credits or one section 30D credit and one section 25E credit. In the case of a joint return, each individual taxpayer may make no more than two transfer elections per taxable year.

(j) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(k) *Applicability date.* This section applies to taxable years ending after December 31, 2023.

■ **Par 3.** Section 1.30D–0, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by:

■ 1. Adding entry (j) to § 1.30D–2;

■ 2. In § 1.30D–4:

■ i. Revising the heading; and

■ ii. Adding entries (f), (f)(1), (f)(1)(i) through (iv), (f)(2), (g), and (h); and

■ 3. Adding an entry in numerical order for § 1.30D–5.

The revisions and additions read as follows:

§ 1.30D–0 Table of contents.

* * * * *

§ 1.30D–2 Definitions for purposes of section 30D.

* * * * *

(j) Seller report.

* * * * *

§ 1.30D–4 Special rules.

* * * * *

(f) Recapture rules.

(1) In general.

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§ 1.30D–5 Transfer of credit and recapture.

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(g) Requirement of return.

(1) In general.

(2) Income tax return.

(h) Two vehicle transfer elections per year.

(i) Severability.

(j) Applicability date.

■ **Par 4.** Section 1.30D–2, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by adding paragraph (j) to read as follows:

§ 1.30D–2 Definitions for purposes of section 30D.

* * * * *

(j) *Seller report.* *Seller report* means the report described in section 30D(d)(1)(H) and provided by the seller of a vehicle to the taxpayer and the IRS in the manner provided in, and containing the information described in, guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter). The seller report must be provided to the IRS electronically. The term *seller report* does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

■ **Par 5.** Section 1.30D–4, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by adding paragraphs (f) through (h) to read as follows:

§ 1.30D–4 Special rules.

* * * * *

(f) *Recapture rules—(1) In general.*

This paragraph (f) provides rules under section 30D(f)(5) regarding the recapture of the section 30D credit.

(i) *Cancelled sale.* If the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 30D credit with respect to the vehicle;

(B) The sale will be treated as not having occurred and the vehicle will be considered available for original use by another taxpayer (regardless of the cancelled sale), and the vehicle will, therefore, still be eligible for the section 30D credit;

(C) The seller report must be rescinded by the seller in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter); and

(D) The taxpayer cannot make a vehicle transfer election under section 30D(g) and § 1.30D–5(c) with respect to the cancelled sale.

(ii) *Vehicle return.* If a taxpayer returns to the seller a vehicle within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report must be updated by the seller; and

(D) A vehicle transfer election under 30D(g) and § 1.30D–5(c), if applicable, will be treated as nullified and any advance payment made pursuant to section 30D(g) and § 1.30D–5(e) will be collected from the eligible entity as an excessive payment pursuant to § 1.30D–5(f).

(iii) *Resale.* If a taxpayer resells the vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated as having purchased the new clean vehicle with the intent to resell, and—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report will not be updated;

(D) A vehicle transfer election under 30D(g) and § 1.30D-5(c), if applicable, will remain in effect and any advance payment made pursuant to section 30D(g) and § 1.30D-5(e) will not be collected from the eligible entity; and

(E) The value of any transferred credit will be collected from the taxpayer.

(iv) *Other vehicle returns and resales.* In the case of a vehicle return not described in paragraph (f)(1)(ii) of this section or a resale not described in paragraph (f)(1)(iii) of this section, the vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit.

(2) *Recapture rules in the case of a vehicle transfer election.* For additional recapture rules that apply in the case of a vehicle transfer election, see § 1.30D-5(f)(1). For excessive payment rules that apply in the case where an advance payment is made to an eligible entity, see § 1.30D-5(f)(2).

(g) *Seller registration.* A seller must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter) for purposes of filing seller reports.

(h) *Requirement to file a complete income tax return.* No section 30D credit is allowed unless the taxpayer claiming such credit files an income tax return for the taxable year in which the new clean vehicle is placed in service. For purpose of this paragraph (h), the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

■ **Par 6.** Section 1.30D-5 is added to read as follows:

§ 1.30D-5 Transfer of credit and recapture.

(a) *Definitions.* This paragraph (a) provides definitions that apply for purposes of section 30D(g) and this section.

(1) *Advance payment program.* *Advance payment program* means the program described in paragraph (e)(1) of this section.

(2) *Dealer.* *Dealer* has the meaning provided in section 30D(g)(8), except that, for purposes of this section, the term does not include persons licensed solely by a territory of the United States, and includes a dealer licensed in any jurisdiction (other than one licensed

solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which its licensed.

(3) *Dealer tax compliance.* *Dealer tax compliance* means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax purposes, and all Federal tax, penalties, and interest due of the dealer as of the time of sale have been paid. A dealer who has entered into an installment agreement with the Internal Revenue Service (IRS) for which a dealer is current on its obligations is treated as in Dealer tax compliance.

(4) *Electing taxpayer.* *Electing taxpayer* means the individual who purchases and places in service a new clean vehicle and elects to transfer the credit under section 30D that would otherwise be allowable to such individual to an eligible entity pursuant to section 30D(g) and paragraph (c) of this section. A taxpayer is an electing taxpayer only if the taxpayer make certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the Internal Revenue Bulletin, including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitations and that the taxpayer will use the vehicle predominantly for personal use.

(5) *Eligible entity.* *Eligible entity* has the meaning provided in section 30D(g)(2) and paragraph (e)(2) of this section.

(6) *Registered dealer.* A *registered dealer* is a dealer that has completed registration with the IRS as provided in paragraph (b) of this section.

(7) *Time of sale.* *Time of sale* means the date the new clean vehicle is placed in service. A new clean vehicle is placed in service on the date the electing taxpayer takes possession of the vehicle.

(8) *Vehicle transfer election.* *Vehicle transfer election* has the meaning provided in section 30D(g) and paragraph (c) of this section.

(b) *Dealer registration—(1) In general.* A dealer must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 30D(g) and paragraph (c) of this section.

(2) *Effect of dealer tax non-compliance.* If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance

payment program (and, therefore, the dealer will not be eligible to receive transferred section 30D credits) until the compliance issue is resolved. If the failure is corrected, the IRS will complete the dealer's registration for the advance payment program, and, provided all other requirements of section 30D(g) and this section are met, the dealer will then be allowed to participate in the advance payment program. Additional procedural guidance regarding this paragraph (b)(2) will be set forth in guidance published in the Internal Revenue Bulletin.

(c) *Vehicle transfer election by electing taxpayer to transfer credit.* For a new clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 30D(g) and this section to make a vehicle transfer election with respect to the vehicle so that the section 30D credit with respect to the vehicle is allowed to the eligible entity specified in the vehicle transfer election (and not to the electing taxpayer) pursuant to the advance payment program described in paragraph (e) of this section. The electing taxpayer, as part of the vehicle transfer election, must transfer the entire amount of the credit that would otherwise be allowable to the electing taxpayer under section 30D with respect to the vehicle, and the eligible entity specified in the vehicle transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the vehicle transfer election. A vehicle transfer election is made not later than at the time of sale in the manner set forth in guidance published in the Internal Revenue Bulletin, and, once made, the vehicle transfer election is irrevocable. No vehicle transfer election may be made to transfer an amount of credit that would otherwise be allowed to the electing taxpayer under section 38.

(d) *Federal income tax consequences of the vehicle transfer election—(1) Treatment of electing taxpayer.* In the case of a vehicle transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The credit amount under section 30D that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) and paragraph (c) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture.

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section to an electing taxpayer

pursuant to the vehicle transfer election is not includible in the gross income of the electing taxpayer.

(iii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the new clean vehicle. Thus, the repayment by the electing taxpayer is included in the electing taxpayer's basis in the new clean vehicle prior to the application of the basis reduction rule in section 30D(f)(1).

(2) *Treatment of eligible entity.* In the case of a vehicle transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the credit under section 30D with respect to the new clean vehicle and may receive an advance payment pursuant to section 30D(g)(7) and paragraph (e) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) and paragraph (c) of this section to an electing taxpayer is not deductible by the eligible entity;

(v) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the new clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized of the eligible entity under section 1001 of the Code and the regulations in this part under section 1001; and

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 30D credit allowed that is transferred to the eligible entity;

(B) Such section 30D credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer.* The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (d)(1) and (2) of this section is the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for purchase of the new clean vehicle.

(4) *Application of certain other requirements.* In the case of a vehicle transfer election, the following additional rules apply—

(i) The requirements of section 30D(f)(1) (regarding basis reduction) and 30D(f)(2) (regarding no double benefit) apply to the electing taxpayer as if the vehicle transfer election were not made (so, for example, the electing taxpayer must reduce its basis in the vehicle by the amount of the section 30D credit, regardless of the vehicle transfer election);

(ii) Section 30D(f)(6) (regarding the election not to take the credit) will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit); and

(iii) Section 30D(f)(9) (regarding the VIN requirement) will be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the IRS in the form and manner set forth in guidance published in the Internal Revenue Bulletin.

(5) *Examples.* The following examples illustrate the rules under paragraph (d) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than value of the credit—(A) Facts.* A taxpayer, who is an individual, purchases a new clean sports utility vehicle from a dealer that is a C corporation. The taxpayer satisfies the requirements to be an electing taxpayer and elects to transfer the section 30D credit to the dealer. The dealer is a registered dealer and satisfies the requirements to be an eligible entity. The purchase price for the vehicle is \$57,500. The credit otherwise allowable to the electing taxpayer by section 30D with respect to the vehicle is \$7,500.

The eligible entity makes the payment required to be made to the electing taxpayer in the form of a cash payment of \$7,500. The electing taxpayer pays back the \$7,500 to the eligible entity and pays an additional \$50,000 as the purchase price of the vehicle. The electing taxpayer's regular tax liability for the year is less than \$7,500.

(B) *Analysis.* Under paragraph (d)(1) of this section, the electing taxpayer may transfer the credit even though the electing taxpayer's regular tax liability is less than \$7,500, and no amount of the credit will be recaptured from the

taxpayer on the basis that the allowable credit exceeded their regular tax liability. The eligible entity's \$7,500 payment to the electing taxpayer is not included in the electing taxpayer's gross income, and the electing taxpayer's purchase price for the vehicle is \$57,500 (including both the \$7,500 payment and the additional \$50,000 purchase price paid), prior to the application of the basis reduction rule of section 30D(f)(1). After application of the basis reduction, the electing taxpayer's basis in the vehicle is \$50,000. The eligible entity is eligible to receive an advance payment of \$7,500 for the transferred section 30D credit as provided in section 30D(g)(7) and paragraph (e) of this section. Under paragraph (d)(2) of this section, the eligible entity may receive the advance payment regardless of whether the eligible entity's regular tax liability is less than \$7,500. The advance payment is not treated as a credit toward the eligible entity's tax liability (if any), nor is it included in the eligible entity's gross income, the eligible entity's \$7,500 payment to the electing taxpayer is not deductible, and the eligible entity's amount realized is \$57,500 upon the sale of the vehicle (including both the \$7,500 payment and the additional \$50,000 purchase price of the vehicle).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer—(A) Facts.* The facts are the same as in paragraph (d)(5)(i)(A) of this section (facts of *Example 1*), except that the eligible entity makes the payment to the electing taxpayer in the form of a reduction in the purchase price (rather than as a cash payment).

(B) *Analysis.* Paragraph (d)(3) of this section provides that the application of paragraphs (d)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in purchase price). Thus, the analysis is the same as in paragraph (d)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership—(A) Facts.* The facts are the same as in paragraph (d)(5)(i)(A) of this section (facts of *Example 1*), except that the dealer is a partnership.

(B) *Analysis.* The analysis as to the electing taxpayer is the same as in paragraph (d)(5)(i)(B) of this section (analysis of *Example 1*). Because the eligible entity is a partnership, paragraph (d)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership

(and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax exempt income to the partnership for purposes of the Code.

(e) *Advance payments received by eligible entities*—(1) *In general.* An eligible entity may receive advance payments from the IRS corresponding to the amount of the section 30D credit for which a vehicle transfer election was made by an electing taxpayer to the eligible entity pursuant to section 30D(g) and paragraph (c) of this section before the eligible entity files its Federal income tax return for the taxable year that includes the taxable year with respect to which the vehicle transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive any payment related to a section 30D credit pursuant to section 30D(g) and paragraph (c) of this section. The eligible entity may not claim a section 30D credit on a Federal income tax return.

(2) *Requirements for a registered dealer to become an eligible entity.* A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment, by meeting the following requirements—

(i) The registered dealer submits required registration information and is in dealer tax compliance;

(ii) The registered dealer retains information regarding the vehicle transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter); and

(iii) The registered dealer meets any other requirements of section 30D(g) and this section included in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter).

(3) *Suspension of registered dealer eligibility.* A registered dealer may be suspended from the advance payment program pursuant to the procedures as described in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter). Any decision made by the IRS relating to the suspension of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registered dealer eligibility.* A registered dealer's registration may be revoked pursuant to the procedures as described in guidance

published in the Internal Revenue Bulletin (see § 601.601 of this chapter). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(f) *Increase in tax*—(1) *Recapture where taxpayer exceeds modified adjusted gross income limitation.* If the section 30D credit would otherwise (but for section 30D(g) and the rules of this section) not be allowable to a taxpayer that elected to transfer the credit under section 30D(g) and this section because the taxpayer exceeds the limitation based on modified adjusted gross income in section 30D(f)(10), then the income tax imposed on such taxpayer under chapter 1 of the Code (chapter 1) for the taxable year in which such vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The taxpayer must reconcile such amounts on the tax return described in paragraph (g)(2) of this section.

(2) *Excessive payments*—(i) *In general.* This paragraph (f)(2) provides rules under section 30D(g)(7)(B), under which rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of the following amounts—

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause.* The amount described in paragraph (f)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a vehicle returned to the eligible entity within 30 days of being placed in service for which a vehicle transfer election was made by the electing taxpayer, as described in § 1.30D-4(d)(1)(ii), the eligible entity will be treated as demonstrating reasonable cause.

(iii) *Excessive payment defined.* *Excessive payment* means an advance payment made—

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in section 30D(g)(2) and paragraph (e)(2) of this section; or

(B) Except as provided in paragraph (f)(2)(iv) of this section, to an eligible entity with respect to a vehicle to the extent the payment exceeds the amount of the credit that, without application of section 30D(g) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.* Any excess described in paragraph (f)(2)(iii)(B) of this section due to the purchaser exceeding the limitation based on modified adjusted gross income provided in section 30D(f)(10) is not an excessive payment. Instead, the value of the amount of the advance payment is recaptured from the purchaser under section 30D(f)(10) and paragraph (f)(1) of this section.

(3) *Example.* This paragraph (f)(3) provides an example to illustrate the excessive payment rules provided in paragraph (f)(2) of this section.

(i) *Facts.* In 2024, D, a registered dealer, receives an advance payment of \$7,500 with respect to a credit transferred under section 30D(g)(1) and paragraph (c) of this section with respect to a new clean vehicle. In 2025, the IRS determines that the registered dealer was not an eligible entity with respect to the vehicle at the time of the receipt of the advance payment in 2024 because the registered dealer failed to satisfy a requirement in section 30D(g)(2) and paragraph (e)(2) of this section to be an eligible entity with respect to the vehicle. D is unable to show reasonable cause for the failure.

(ii) *Analysis.* Under paragraph (f)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (f)(2)(iii) of this section, the entire amount of the \$7,500 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) and paragraph (e)(2) of this section. Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by \$9,000 in 2025 (the taxable year of the IRS determination). This is comprised of the \$7,500 value of the credit plus the \$1,500 penalty, calculated as 20% penalty on such \$7,500 (20% * \$7,500 = \$1,500). This treatment applies

regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(g) *Requirement of return*—(1) *In general.* An electing taxpayer that makes a vehicle transfer election must file an income tax return for the taxable year in which the vehicle transfer election is made and indicate such election on the return per instructions. The electing taxpayer must include the VIN of the new clean vehicle on such return, as provided for in forms and instructions.

(2) *Income tax return.* For purposes of this section, the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(h) *Two vehicle transfer elections per year.* A taxpayer may make no more than two transfer elections per taxable year, consisting of either two section 30D credits or one section 30D credit and one section 25E credit. In the case of a joint return, each individual taxpayer may make no more than two transfer elections per taxable year.

(i) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(j) *Applicability date.* This section applies to taxable years beginning after December 31, 2023.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par 7.** The authority citation for part 301 is amended by adding an entry in numerical order for § 301.6213–2 to read, in part, as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6213–2 also issued under 26 U.S.C. 6213.

* * * * *

■ **Par 8.** Section 301.6213–2 is added to read as follows:

§ 301.6213–2 Omission of correct vehicle identification number.

(a) *In general.* The definition of the term *mathematical or clerical error* in section 6213(g)(2) of the Internal Revenue Code (Code) includes:

(1) Under section 6213(g)(2)(T), an omission of a correct vehicle identification number required under section 30D(f)(9) of the Code (relating to credit for new clean vehicles) to be included on a return;

(2) Under section 6213(g)(2)(U), an omission of a correct vehicle identification number required under section 25E(d) of the Code (relating to credit for previously-owned clean vehicles) to be included on a return; and

(3) Under section 6213(g)(2)(V), an omission of a correct vehicle identification number required under section 45W(e) of the Code (relating to commercial clean vehicle credit) to be included on a return.

(b) *Omission of a correct vehicle identification number.* For purposes of paragraph (a) of this section, a taxpayer is treated as having omitted a correct vehicle identification number if:

(1) The vehicle identification number required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is not included on the return of tax;

(2) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W;

(3) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W for the year in which it is claimed;

(4) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 30D(d)(1)(H) for each new clean vehicle placed in service during the taxable year by the taxpayer who was issued the report; or

(5) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 25E(c)(1)(D)(i) for each previously-owned clean vehicle placed in service during the taxable year by the taxpayer who was issued the report.

(c) *Applicability date.* This section applies to taxable years beginning after December 31, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–22353 Filed 10–6–23; 8:45 am]

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