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Presidential Documents

Title 3—

The President

Proclamation 10677 of November 21, 2023

Death of Rosalynn Carter

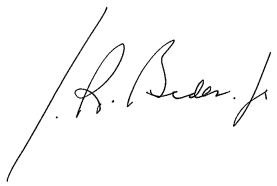
By the President of the United States of America

A Proclamation

Throughout her life as First Lady of Georgia and First Lady of the United States, Rosalynn Carter exemplified hope, warmth, and a steadfast commitment to doing all she could to address many of our society's greatest needs. She was a champion for equal rights and opportunities for women and girls; an advocate for mental health and wellness for all; and a supporter of the often unseen and uncompensated caregivers of our children, aging loved ones, and people with disabilities. Above all, the deep love shared between Jimmy and Rosalynn Carter is the definition of partnership, and their humble leadership is the definition of patriotism.

As a mark of respect for the memory of Rosalynn Carter, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions from November 25, 2023, until sunset, on the day of interment. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Doc. No. AMS–FTPP–20–0057]

RIN 0581–AD95

National Bioengineered Food Disclosure Standard; List of Bioengineered Foods

ACTION: Final rule.

SUMMARY: This final rule updates the National Bioengineered Food Disclosure Standard's (the Standard) List of Bioengineered (BE) Foods (the List) by adding ''sugarcane (Bt insect-resistant varieties)'' to the List and amending ''squash (summer)'' to ''squash (summer, coat protein-mediated virus-resistant varieties).'' In updating the List, this final rule provides consumers with information regarding foods that may be BE and aids regulated entities in determining whether they need to make a BE disclosure.

DATES:

Effective Date: This rule is effective December 29, 2023.

Compliance Date: June 23, 2025.

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Research and Rulemaking Branch Chief, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, Telephone (202) 720–4486, Email: *kenneth.becker@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, Public Law 114–216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be BE. USDA published a final rule (2018 BE final rule) promulgating the regulations (7 CFR part 66) to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory compliance date of January 1, 2022. Under 7 CFR 66.1, a BE food is a food that, subject to certain factors, conditions, and limitations, contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

The regulations, at 7 CFR 66.6, contain the List, which currently includes: alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh varieties), potato, salmon (AquAdvantage®), soybean, squash (summer), and sugarbeet. As stated in the preamble to the 2018 BE final rule, at 83 FR 65852, the List establishes a presumption about what foods require disclosure under the Standard. However, a food or food ingredient's absence from the List does not absolve regulated entities from the requirement to disclose the BE status of food and food ingredients produced with foods not on the List when the regulated entities have actual knowledge that such foods or food ingredients are BE. If a regulated entity is using a food or ingredient produced from an item on the List, it must make a BE food disclosure unless it has records demonstrating that the food or ingredient it is using is not BE. Similarly, even if a food is not on the List, a regulated entity must make a BE food disclosure if it has actual knowledge that a food or a food ingredient being used is a BE food or a BE food ingredient. In accordance with 7 CFR 66.7(a)(5), this final rule updates the List.

On July 22, 2022, AMS published a proposed rule in the **Federal Register** seeking public comment on recommendations to update the List (87 FR 43751). In the proposed rule, AMS sought comments on adding ''sugarcane (Bt insect-resistant varieties)'' to the List and amending ''squash (summer)'' to ''squash (summer, mosaic virus-resistant varieties).'' Pursuant to 7 CFR 66.7(a)(3), AMS consulted with the government agencies responsible for oversight of the products of biotechnology, Animal and Plant Health Inspection Service (APHIS), Environmental Protection Agency (EPA), and Food and Drug Administration (FDA), on the proposed updates to the List.

The comment period for the proposed rule closed on September 20, 2022. AMS received a total of 37 comments, out of which 36 comments were related to the proposed rule and one comment was unrelated. Commenters included individuals, consumer groups, companies, and organizations that represent different segments of the food industry. After reviewing the public comments, AMS is proceeding with this final rule to add ''sugarcane (Bt insect-resistant varieties)'' to the List and amend ''squash (summer)'' to ''squash (summer, coat protein-mediated virus-resistant varieties).'' Table 1 summarizes the final revisions to the List.

TABLE 1—UPDATES TO THE LIST

Crop	Regulation	Final rule action
Sugarcane	7 CFR 66.6	Add to the List as ''sugarcane (Bt insect-resistant varieties)''.
Squash (summer)	7 CFR 66.6	Add additional modifier to the existing entry on the List to read ''squash (summer, coat protein-mediated virus-resistant varieties)''.

II. Comments on the Proposed Rule

Most commenters supported the proposed rule overall, with many stating that they thought that the two proposed List updates would provide the public with accurate information on the BE status of foods. There was, however, opposition from two commenters about AMS's proposal to add ''sugarcane (Bt

insect-resistant varieties)'' to the List. AMS has reviewed and considered the issues raised by commenters and provides its responses below.

1. Addition to the List

AMS requested public comments on the proposed addition of ''sugarcane (Bt insect-resistant varieties)'' to the List.

Comment: Commenters both supported and opposed the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List. Commenters in support of the addition of ''sugarcane (Bt insect-resistant varieties)'' expressed that it would provide more information to consumers. Commenters opposed to the addition of ''sugarcane (Bt insect-resistant varieties)'' expressed concern that this would place an undue burden on regulated industry for a product that was unlikely to be sold in the United States. Lastly, some commenters suggested that because sugar produced from ''sugarcane (Bt insect-resistant varieties)'' is highly refined, it does not contain detectable modified genetic material, it is not a BE food, and it should not be added to the List.

AMS Response: AMS has considered all the information provided to the agency related to the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List. AMS has determined that the criteria identified in 7 CFR 66.7(a)(4) are met. ''Sugarcane (Bt insect-resistant varieties)'' has been authorized for commercial production in Brazil and is currently in legal commercial production for human food in Brazil.[1] There is no statutory or regulatory requirement that a BE food must be sold or grown in the United States for that food to be placed on the List. 7 CFR 66.7(a)(4) states that when determining if a food will be added to the List, ''AMS will consider whether foods for inclusion on the List have been authorized for commercial production somewhere in the world, and whether the food is currently in legal commercial production for human food somewhere in the world.'' AMS notes that the BE sugarcane grown in Brazil could be sold in the United States as an ingredient in single or multi-ingredient food products.

Additionally, AMS requested commenters provide any data and evidence that would suggest ''sugarcane (Bt insect-resistant varieties)'' is being used for seedling bulk up rather than human consumption but did not receive any information in response to this request.

AMS does not believe that the addition of ''sugarcane (Bt insect-resistant varieties)'' constitutes an undue burden for regulated entities. AMS notes that regulated entities, both domestic and foreign, likely will have customary and reasonable records in accordance with the Standard if they are maintaining records in compliance with other laws and regulations associated with the food sector (83 FR 65830). Records are required to substantiate a decision not to label under 7 CFR 66.9. The Standard at 7 CFR 66.302(a)(4) includes a non-exhaustive list of records that could satisfy the recordkeeping requirements. That list includes, but is not limited to, supply chain records, bills of lading, invoices, supplier attestations, contracts, or brokers' statements (such as those used to maintain compliance with the Perishable Agricultural Commodities Act); third party certifications (such as organic certifications provided by the USDA's National Organic Program); laboratory testing results, and validated process verifications. These records could also include country of origin records that show a product or ingredient is from a country that has not authorized a BE variety of the crop for commercial production.

In response to some commenters' statements that sugarcane is likely highly refined, AMS notes that the List establishes a presumption about what foods and food ingredients are or may be BE. Inclusion on the List does not affirmatively mean an item on the List, or a food produced from an item on the List, is a BE food. Rather, inclusion on the List establishes a presumption and requires a regulated entity to make a BE food disclosure unless it maintains records, in accordance with 7 CFR 66.9, to demonstrate genetic material is not detectable, or that the regulated entity or food qualifies for an exemption listed at 7 CFR 66.5.

Comment: One commenter opposed the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List, noting that while the regulations require AMS to consider whether a food is authorized for commercial production somewhere in the world, and whether the food is currently in legal commercial production for human food somewhere in the world, AMS retains discretion as to its decision. Another commenter noted that in light of AMS's regulatory requirement to consider ''all relevant information,'' sugarcane should not be added to the List at this time.

AMS Response: As stated in the 2018 BE final rule that established the Standard, the List captures BE crops or foods that meet the statutory definition of bioengineering, based on existing technology, and that could potentially be offered for sale in the United States.[2] In addition, Section 66.1 of the Standard defines the List as a list, maintained and updated by AMS and provided in 7 CFR 66.6, of foods for which BE versions have been developed. Commenters did not dispute that there is a BE version of sugarcane and that a BE version of sugarcane is currently authorized for commercial production and is currently in legal commercial production for human consumption in Brazil.

2. Update to the List

AMS requested public comments on the proposed List update changing ''squash (summer)'' to ''squash (summer, mosaic virus-resistant varieties).''

Comment: Most commenters supported updating ''squash (summer)'' on the List to include a modifier, and no commenters opposed the inclusion of a modifier. As with the addition of ''sugarcane (Bt insect-resistant varieties),'' commenters generally agreed that updating ''squash (summer)'' to include a modifier would provide additional information to consumers. Although no commenters were opposed to updating ''squash (summer),'' one commenter suggested revising the proposed modifier, which is discussed in the next comment discussion below. No commenters addressed AMS's questions requesting information on the market share of BE and non-BE squash.

AMS Response: AMS proposed to update the List entry for ''squash (summer)'' to ''squash (summer, mosaic virus-resistant varieties)'' to provide additional descriptive information to stakeholders, including regulated entities and consumers. This change would be consistent with the treatment of other items on the List, where modifiers are included to describe a trait, as is the case with eggplant, papaya, and pineapple. AMS believes the further revised modifier for squash serves these goals as detailed below.

Comment: A commenter stated that the proposed ''mosaic virus-resistant varieties'' modifier is not specific enough to provide meaningful information to consumers. The commenter asked AMS to change the proposed ''mosaic virus-resistant varieties'' modifier to a more technical

[1] USDA Foreign Agriculture Service. (2019). Gain Agricultural Information Network: Agricultural Biotechnology Annual Report—Brazil *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_Brasilia_Brazil_10-20-2019.*

[2] National Bioengineered Food Disclosure Standard, 83 FR 65818 (Dec. 21, 2018).

modifier to provide more meaningful information to consumers.

AMS Response: The goal in adding a modifier to the List entry for squash is to narrow the presumption of what type of squash is considered BE. The preamble to the 2018 BE final rule states, ''Where practical, the List includes specific information about individual crops and foods, such as descriptions or trade names, to help distinguish bioengineered versions of those foods from their non-bioengineered counterparts, as requested by commenters.'' [3] Amending the modifier for squash to include a more specific descriptor would be consistent with the treatment of other items on the List, where descriptive modifiers are included. A request for comments published July 24, 2020, sought to narrow the scope of the List entry for squash to serve this goal.[4] AMS received 22 comments on the request for comments, and later the proposed rule, supporting a modifier as it would provide additional information to consumers.

The proposed modifier in the request for comments was to amend ''squash (summer)'' to ''squash (summer, virus-resistant varieties).'' Comments on the request for comments suggested using a trade name; however, as explained in the proposed rule, the availability of two squash varieties in legal commercial production precludes this option.[5] [6] Both varieties provide resistance to mosaic viruses, so the proposed modifier was updated to ''mosaic virus-resistant varieties'' in the proposed rule. Despite this further refinement, a commenter still noted the modifier was too broad in a comment on the proposed rule.

In response to the comment on the proposed rule, AMS researched whether the modifier was still too broad and if further refinement was indeed required. AMS concluded that further refinement was needed to provide more specific information to regulated entities and consumers on squash varieties requiring disclosure. As technology advances and new squash varieties are developed, the modifier may need further refinement. The originally proposed modifier, ''mosaic virus-resistant varieties'', covers the two BE squash varieties mentioned above, it would also cover squash varieties that are not BE. ''Mosaic virus-resistance'' specifies the result of the trait, namely that the squash is less susceptible to diseases caused by mosaic virus pathogens [7] ''mosaic virus resistance'' to describe both BE and non-BE squash that are resistant to mosaic viruses. The two BE squash varieties mentioned above are mosaic virus resistant.[5] [6] Non-BE squash varieties could be more resistant to viruses naturally [7] or as a result of conventional breeding,[8] [9] [10] the result would be a mosaic virus-resistant squash that is not BE. AMS believes that it should refine the modifier to include all BE squash varieties and exclude all non-BE squash varieties.

AMS considered several options for a modifier that would accomplish the above goals and be narrower than ''mosaic virus-resistant varieties.'' Use of a trade name was not possible, as explained above, because of the availability of two BE squash varieties. The terms ''transgenic virus resistance'' [11] and ''genetically engineered virus resistance'' [12] would narrow the ''mosaic virus-resistant varieties'' modifier. These two modifiers describe the process used to achieve the virus resistance trait; however, the terms ''transgenic'' and ''genetically engineered'' are not defined in the Standard. AMS believes that using terms like ''transgenic'' or ''genetically engineered'' may create inconsistency with the Standard's scope of disclosure.

''Pathogen-derived resistance'' [13] has been used to describe the traits found in BE squash. However, this modifier is broad and could refer to bacterial or fungal resistance,[14] not just virus resistance. Therefore, it would not be wholly accurate and would not narrow the proposed modifier, ''mosaic virus-resistant varieties''. ''Coat protein-mediated protection'' [15] and ''coat protein-mediated virus resistance'' [16] [17] refer specifically to the trait found in BE squash varieties. Both these terms explain a subset of pathogen derived resistance in which a gene from a virus is added to a plant genome through biotechnology. The added viral coat protein gene then slows or prevents subsequent viral infection. AMS determined that ''coat protein-mediated virus resistance'' is the preferred terminology as it is more descriptive than ''coat protein-mediated protection,'' and it is used by academics and the industry. AMS believes the preferred term is more helpful to regulated entities and consumers. Both varieties of BE squash mentioned above use coat protein-mediated virus resistance to achieve mosaic virus resistance. Only BE squash is known to have coat protein-mediated virus resistance. The ''coat protein-mediated virus-resistant varieties'' modifier is more specific than ''mosaic virus-resistant varieties'' and currently pertains only to mosaic virus resistance achieved in BE squash varieties.[18]

[3] National Bioengineered Food Disclosure Standard, 83 FR 65819 (Dec. 21, 2018).

[4] USDA–AMS (2022). Public Comments for Proposed Rule: National Bioengineered Food Disclosure Standard: Updates to the List of Bioengineered Foods (Docket AMS–FTPP–20–0057). *https://www.regulations.gov/document/AMS-FTPP-20-0057-0001.*

[5] U.S. FDA. (1997). Consultations on Food from New Plant Varieties. *https://www.accessdata.fda.gov/scripts/fdcc/index.cfm?set=Biocon&id=SEM%2D0CZW3%2D2.*

[6] U.S. FDA. (1994). Consultations on Food from New Plant Varieties. *https://www.accessdata.fda.gov/scripts/fdcc/index.cfm?set=Biocon&id=SEM%2D0ZW20%2D7.*

[7] Martín-Hernández, A.M., & Picó, B. (2020). Natural resistances to viruses in cucurbits. *Agronomy,* 11(1), 23. *https://doi.org/10.3390/agronomy11010023.*

[8] Schultheis, J.R., & Walters, S.A. (1998). Yield and virus resistance of summer squash cultivars and breeding lines in North Carolina. *HortTechnology,* 8(1), 31–39. *https://doi.org/10.21273/HORTTECH.8.1.31.*

[9] Harris Seeds Product Page. (n.d.). Squash Reward F1 Seed. Product number 11780–00–01–012. *https://www.harrisseeds.com/products/11780-squash-reward-f1?variant=12427665539144.*

[10] Bayer Group. (2022). Agronomic Spotlight: Mosaic Virus Diseases of Squash. *https://www.vegetables.bayer.com/us/en-us/resources/growing-tips-and-innovation-articles/agronomic-spotlights/mosaic-virus-diseases-of-squash.html.*

[11] Mueller, E., Gilbert, J., Davenport, G., Brigneti, G., & Baulcombe, D.C. (1995). Homology-dependent resistance: transgenic virus resistance in plants related to homology-dependent gene silencing. *The Plant Journal, 7*(6), 1001–1013. *https://doi.org/10.1046/j.1365-313X.1995.07061001.x.*

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[15] Gonsalves, D. & Slightom, J.L. (1993). Coat protein-mediated protection: analysis of transgenic plants for resistance in a variety of crops. Seminars in Virology, 4, 397–405. *https://doi.org/10.1006/smvy.1993.1039.*

[16] Beachy, R.N., Loesch-Fries, S., & Tumer, N. (1990). Coat protein-mediated resistance against virus infection. *Annual Review of Phytopathology,* 28, 451–474. *https://doi.org/10.1146/annurev.py.28.090190.002315.*

[17] Lindbo, J.A., & Falk, B.W. (2017). The impact of ''coat protein-mediated virus resistance'' in applied plant pathology and basic research. *Phytopathology, 107*(6), 624–634. *https://doi.org/10.1094/phyto-12-16-0442-rvw.*

[18] Tricoll, D.M., Carney, K.J., Russell, P.F., McMaster, J.R., Groff, D.W., Hadden, K.C., Himmel, P., T., Hubbard, J.P., Boeshore, M.L., & Quemada, H.D. (1995). Field evaluation of transgenic squash containing single or multiple virus coat protein gene constructs for resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus. *Bio/technology, 13*(12), 1458–1465. *https://doi.org/10.1038/nbt1295-1458.*

Therefore, the ''coat protein-mediated virus-resistant varieties'' modifier encompasses both BE varieties of squash without including any non-BE varieties. AMS believes that this modifier narrows the List entry for squash and will amend the List using this modifier. With the addition of the modifier, summer squash that is not a coat protein-mediated virus-resistant variety will no longer be presumed to be a BE food.

AMS consulted with the government agencies responsible for oversight of the products of biotechnology, APHIS, EPA, and FDA, regarding the two updates to the List, including the updated ''coat protein-mediated virus-resistant varieties'' modifier. Representatives from APHIS and FDA had no comments on the use of ''coat protein-mediated virus-resistant varieties'' for the modifier used on the List. EPA suggested adding ''gene'' to the modifier: ''coat protein gene-mediated virus-resistant varieties.'' EPA's suggestion would clarify that ''coat protein'' is the name of the gene that encodes the coat protein of a virus and that it is the presence of the gene in BE squash that confers resistance to mosaic viruses, rather than the protein product of the gene. While EPA's proposed modifier may provide more scientific clarity, AMS will use ''coat protein-mediated virus-resistant varieties'' without adding ''gene.'' AMS believes adding ''gene'' to the commonly used, AMS-preferred term would not provide any additional insight for consumers in identifying what foods are presumed to be a BE food.

3. Information Collection and Recordkeeping Comment

Commenters expressed that the proposed amendment would create burdens in connection with recordkeeping for sugarcane. They recommended that sources, trade names, and modifiers should be included on the List to minimize the recordkeeping burden of substantiating a determination not to disclose. One commenter stated that AMS's economic analysis was flawed. The commenter stated that AMS miscalculated the costs associated with the use of sugarcane in products, underestimating the time and resources required to comply with the recordkeeping requirements. The commenter also stated that AMS calculated estimated costs by erroneously considering only Universal Product Codes (UPCs) that use cane sugar as an ingredient. The commenter contends that this analysis does not account for the costs incurred by regulated entities with those UPCs that contain other ingredients made from BE foods and crops in addition to cane sugar. The commenter's position is that these regulated entities would incur costs associated with their use of cane sugar regardless of whether the final product contains other BE ingredients or ingredients derived from BE sources.

AMS Response: AMS has considered all information provided to the agency related to the modifier for sugarcane and has determined ''sugarcane (Bt insect-resistant varieties)'' to be the most precise naming convention to minimize the recordkeeping burden. The List includes specific information about certain individual crops and foods, such as modifiers or trade names, to help distinguish BE versions of those foods from their non-BE counterparts. The specificity of the sugarcane modifier ''Bt insect-resistant varieties'' is intended to identify foods for which disclosure may be necessary, based on the regulated entities' records. There would be no presumption that sugarcane or sugarcane-derived ingredients would be BE unless they were sourced from Bt insect-resistant varieties. Regulated entities may refer to the AMS website to obtain additional information regarding the associated BE events for crops or foods they are sourcing and determine whether they need to make a disclosure.

Products with potential BE ingredients (other than cane sugar) do not need to be added into the calculation for recordkeeping costs (since the recordkeeping costs associated with those ingredients are already included in the cost of the baseline program). Products that could use BE varieties of sugarcane, but list only ''sugar'' as an ingredient already require recordkeeping under the Standard and thus were not considered when estimating costs associated with this rule. If a regulated entity was already disclosing a BE food, their disclosure requirements would not change, nor would they incur additional costs.

Customary and reasonable records can be used to justify non-disclosure for sugarcane-containing products. For further details on the economic analysis, see Section III.D of this rule.

Comment: Commenters explained that recordkeeping for refined sugars typically does not follow standard recordkeeping specifications that track the sugar back to its source. Commenters further stated that generating records and coordinating with suppliers and laboratories for such records is a significant cost. Due to these obstacles, commenters requested a 24-month enforcement discretion period for recordkeeping of sugarcane.

AMS Response: The final rule at 7 CFR 66.7(b) states that, ''regulated entities will have 18 months following the effective date of the updated List of Bioengineered Foods to revise food labels to reflect changes to the List in accordance with the disclosure requirements.'' After considering input from commenters and other available information when drafting the 2018 BE final rule, AMS recognized that regulated entities should have sufficient time to transition their recordkeeping and labeling processes and procedures to implement the BE disclosure requirements. AMS continues to believe that regulated entities will have sufficient time to update recordkeeping procedures and to revise food labels to reflect changes to the List contained in this update within the 18-month compliance phase-in period.

4. Outreach and Education

Comment: Commenters requested increased outreach and education to consumers on BE foods to include definitions for the descriptions of resistant varieties.

AMS Response: AMS intends to update the List on its website consistent with this final rule. Any definitions for the modifiers of resistant varieties included in this final rule will be reflected on the AMS website. The AMS website provides consumers and regulated entities with additional information including FDA-reviewed BE events in the food supply, BE varieties, trade names, source, and traits (*e.g.,* non-browning, pesticide resistance, virus resistance, enhanced growth, etc.) for items on the List. While the List names each food known to have a BE variety, this additional information on the website seeks to enumerate each available BE variety. Regulated entities can use this information, to better understand if their products require a BE disclosure. Similarly, consumers can use this information to understand the types of BE products available. AMS will continue to update the website and corresponding outreach materials as new information becomes available.

III. Required Regulatory Analyses

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection related to the Standard has previously been approved by OMB and assigned OMB No. 0581–0315—National Bioengineered Food Disclosure Standard. AMS estimates that changes in the recordkeeping burden due to the

proposed revisions to the List would be minimal.

Generally, the records necessary to substantiate the need for a disclosure are customary and reasonable, and maintained in the usual course of business. The same records would be required to substantiate a decision not to label under 7 CFR 66.9. Limiting reporting to specific varieties of summer squash does not impact recordkeeping. Entities may still be subject to an examination of customary or reasonable records for summer squash following a BE audit, as outlined in 7 CFR 66.402.

AMS requested comments with data or information on market share or proportion of squash of virus-resistant varieties and the number of entities that might be impacted by this change as part of the proposed rule during the 60-day comment period. While AMS received two comments during the open comment period for the Information Collection renewal request published in 2022,[19] those comments were not substantive and did not include any data or comments on market share or proportion of virus-resistant varieties of squash.

B. Civil Rights Review

AMS has considered the potential civil rights implications of this final rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against based on race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations.

The 2018 BE final rule offers several distinct avenues of compliance for regulated entities that can be tailored to the needs of their consumers. This final rule to update the List of BE Foods does not alter those options. No persons or groups are denied the benefits of the program nor are any persons or groups subjected to discrimination by making amendments to the List. The amended Act is a federal law that established a national, mandatory standard for disclosing any food that is or may be BE. The law applies generally to all persons conducting business subject to the Standard. Congress declared in the amended Act that ''a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation''.[20]

USDA, AMS' Food Disclosure and Labeling Division administers and enforces the Standard and its regulations and is responsible for establishing new rules as needed. This final rule updates the List of BE Foods at 7 CFR 66.6 by adding ''sugarcane (Bt insect-resistant varieties)'' to the List and amending ''squash (summer)'' to ''squash (summer, coat protein-mediated virus-resistant varieties)'' under the Standard. Regulated entities, subject to this final rule, and consumers who benefit from the rule, would not be required to apply to any program or opt-in to participate. This final rule is not intended to: (1) opt-in any stakeholder to participation under the AMS final rule; and/or (2) recruit any stakeholder including consumers, retailers, manufacturers, or importers. The regulation acts as a federal law that would establish the requirement for BE food disclosure to consumers; and regulated entities that fail to disclose would be subject to an investigation and results reported on the AMS website.

C. Executive Order 13175

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

This final rule may impact individual members of Indian Tribes that operate as food manufacturers or retailers; however, AMS has determined that this final rule does not have a direct effect on Tribes or the relationship or distribution of power and responsibilities between the Federal Government and Indian Tribes that would require consultation. AMS continues to engage with Tribes on such changes, including through teleconference calls on March 11, 2021, and July 22, 2021, where AMS provided Tribal representatives with an overview of the upcoming proposed rule that would add ''sugarcane (Bt insect-resistant varieties)'' to the List, amend ''squash (summer)'' to include the modifier ''mosaic virus-resistant varieties'' and extended the opportunity for questions and requests for additional information. At that time, AMS received no questions or requests from Tribal representatives.

On September 20, 2022, the comment period for the proposed rule closed. Only one comment out of 37 comments received on the proposed rule was identified as being submitted from a Tribal representative. The commenter acknowledged the proposed rule provides transparency to the consumer about BE foods and stated that the Tribal groups have not yet seen if certain groups will be affected, but the exemptions seem to offer such groups with a cushion. AMS will continue to extend outreach to ensure Tribe members are aware of the requirements and benefits under this final rule once effective. Where Tribes request consultation on relevant matters that are not required under legislation, AMS will collaborate with the Office of Tribal Relations to ensure meaningful consultation is provided.

D. Executive Orders 12866, 14094 and 13563

USDA is issuing this final rule in conformance with Executive Orders 12866 and 13563, which 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, which include 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 rule has been designated ''Significant'' under Executive Order 12866 as amended by Executive Order 14094. To provide sufficient time to help mitigate impacts to regulated entities, pursuant to 7 CFR 66.7(b), regulated entities have 18 months following the effective date of the updated List of Bioengineered Foods to revise food labels to reflect changes to the List in accordance with the disclosure requirements of this part.

[19] USDA–AMS. (2022). Public Comments for the National Bioengineered Food Disclosure Standard Information Collection Renewal (Docket AMS–22–0005–0001). *https://www.regulations.gov/document/AMS-AMS-22-0005-0001.*

[20] Agricultural Marketing Act of 1946''. Sec 202. [7 U.S.C. 1621 note] *https://www.govinfo.gov/content/pkg/COMPS-10259/pdf/COMPS-10259.pdf.*

AMS identified three benefits of this rule. First it fulfills the regulatory responsibility to update the List according to 7 CFR 66.7. Sugarcane has satisfied the criteria for inclusion, as does the amendment to squash; in addition, the amendment to squash was initiated by a comment from the stakeholder. The updates in this final rule inform consumers whether certain products are BE, and aid regulated entities in determining if their product requires disclosure. Second, this rule provides specific information to consumers about the types of BE foods that are or could become available for retail sale. Third, this rule removes the presumption that all summer squash is BE and now only ''coat protein-mediated virus-resistant varieties'' will be presumed to be BE.

Cost changes due to this action will be limited to the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List because regulated entities have already incurred costs associated with the inclusion of summer squash on the List. More specifically, processors and retailers of summer squash are already required to keep records to justify their decision to label or not label their product. The addition of a new modifier to summer squash does not absolve regulated entities of the recordkeeping responsibility. The number of BE ''squash (summer, coat protein-mediated virus-resistant varieties)'' that must be labeled will remain the same as the number of BE ''squash (summer)'' that were required to be labelled pursuant to the original List in the 2018 BE final rule. All BE squash still must bear a disclosure. With the addition of the modifier, summer squash that is not a coat protein-mediated virus-resistant variety will no longer be presumed BE. The record keeping burden for regulated entities selling summer squash, or products with summer squash ingredients will also remain the same, since regulated entities are required to maintain records demonstrating that their product is not BE to satisfy the requirements of 7 CFR 66.302.

The addition of ''sugarcane (Bt insect-resistant varieties)'' to the List would not significantly increase the cost of compliance with, or enforcement of, the BE labeling requirements. To estimate the cost of this action, we used the Label Insight Database to determine the number of products that use sugarcane as an ingredient, and which have no other ingredients that would otherwise require labeling of the product as BE as described in the Regulatory Impact Analysis for the 2018 BE final rule on page 19.[21] A total of 10,600 individual UPCs were identified using this criterion. Products that could use BE varieties of sugarcane, but list only ''sugar'' as an ingredient already require recordkeeping under the Standard and thus were not considered when estimating costs associated with this rule.

Increased costs associated with this rule are analytical costs and testing costs. Analytical costs represent the administrative costs of determining applicability of the Standard to products and compiling any records that may be required. Testing costs represent the costs that regulated entities would incur to test their products for detectable modified genetic material. The upper and lower bounds of the estimate were calculated by multiplying 10,600 UPCs by the unit cost for testing for detectability (unit cost range: $153–$431) and for analytical costs (unit cost range: $376–$3,084) as described in the Regulatory Impact Analysis for the 2018 BE final rule.[22] This is likely an overestimate of costs, as a test may be used to cover multiple UPCs. For example, different sizes of the same product would have different UPCs yet require only a single test for the product. AMS estimates that the costs associated with this action would range from $6 million to $37 million for the initial year, with no ongoing annual costs and no significant change in benefits. The annualized cost would be between $500,000 and $3.5 million (annualized over 20 years using a seven percent discount rate). Most of the estimated costs are related to a one-time deliberation and potential testing by food manufacturers to confirm the source of sugar used in their products and to comply with recordkeeping and labeling requirements.

E. Final Regulatory Flexibility Analysis

AMS has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities, consistent with statutory objectives. AMS has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

The addition of ''sugarcane (Bt insect-resistant varieties)'' and amendment of ''squash (summer)'' to ''squash (summer, coat protein-mediated virus-resistant varieties)'' to the List would directly affect three industry sectors: manufacturers that process sugarcane, processed food manufacturers that use sugarcane or summer squash as ingredients, and grocery or other retailers that sell raw sugarcane or summer squash.

According to the 2017 Study of U.S. Business (SUSB) from the U.S. Census, there were 37 manufacturers that process sugarcane in the United States. Approximately 32 of these manufacturers would meet the Small Business Administration definition of small. Of the 32 small firms, 11 would also qualify as very small food manufacturers under the Standard and would be exempt from disclosure requirements. Accordingly, those 11 firms would incur no costs associated with the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List. The remaining 21 small firms would not likely face significant costs as they only have one product and are likely to know where the cane for their sugar originates. At this time ''sugarcane (Bt insect-resistant varieties)'' is grown commercially only in Brazil. If ''sugarcane (Bt insect-resistant varieties)'' becomes more prevalent, manufacturers that process sugarcane may incur additional costs associated with substantiating non-disclosure (*e.g.,* maintaining customary and reasonable records on the origin of the sugarcane processed into sugar, certification costs associated with demonstrating that the final product has no detectable modified genetic material). If the refinement of cane sugar, like beet sugar, would verifiably not contain detectable modified genetic material and therefore would not be BE, cane sugar producers would face minimal labeling costs.

Processed food manufacturers that use sugarcane as an ingredient will need to determine whether the sugar they use is BE—assuming sugar made from ''sugarcane (Bt insect-resistant varieties)'' makes it into the U.S. market. Most food manufacturers already face costs associated with determining whether their ingredients are BE and maintaining records to demonstrate that determination. The marginal cost associated with an additional ingredient is expected to be small. As noted in section III(D) of this rule, the costs

[21] USDA–AMS. (2019). Regulatory Impact Analysis for the Proposed Rule: National Bioengineered Food Disclosure Standard: Updates to the List of Bioengineered Foods (Docket AMS–TM–17–0050–14035). *https://www.regulations.gov/document/AMS-TM-17-0050-14035.*

[22] USDA–AMS. (2019). Regulatory Impact Analysis for the Proposed Rule: National Bioengineered Food Disclosure Standard: Updates to the List of Bioengineered Foods (Docket AMS–TM–17–0050–14035). *https://www.regulations.gov/document/AMS-TM-17-0050-14035.*

associated with this final rule will be limited to administrative costs to analyze applicability of the rule and compliance and validation testing to determine the presence of detectable modified genetic material in affected products. As with beet sugar, it is unlikely that refined sugarcane would contain detectable levels of modified genetic material. As a result, regulated entities may not have additional labeling costs due to the addition of ''sugarcane (Bt insect-resistant varieties)'' to the List.

Food manufacturers whose products contain summer squash and retailers that sell uncooked summer squash will see no change in costs as the amendment to the List would reduce the varieties of squash that are presumed to be a BE food. Food manufacturers whose products contain summer squash and retailers that sell uncooked summer squash are already maintaining records or labeling relevant products in accordance with the Standard.

Food manufacturers that use summer squash are likely concentrated in Fruit and Vegetable Preserving and Specialty Food Manufacturing (The North American Industry Classification System (NAICS) 3114). This industry sector had 1,540 firms listed in the 2017 Statistics of US Businesses. Of these, approximately 1,475 would be classified as small. Additionally, 904 firms would be classified as very small food manufacturers by the Standard and are therefore exempt. Food manufacturers already face the administrative costs associated with using a product on the List. The final rule would make it easier for regulated entities, who are already maintaining records in compliance with the Standard, to demonstrate that labeling is not required if they know they are not receiving BE varieties. Costs to small food manufacturers using summer squash therefore will remain unchanged by this proposal.

Retailers will not see a change in the number of labels required as a result of the change in the modifier of summer squash or by the addition of sugarcane. Summer squash that meets the requirement for disclosure under the 2018 BE final rule will also meet the requirement for disclosure under this amendment. The same number of labels are required under the two rules. Therefore, the cost to retailers will remain unchanged. Therefore, the costs to each of the three affected industry sectors would not be significant. For these reasons, AMS is certifying that this rule to add ''sugarcane (Bt insect-resistant varieties)'' to the List and limiting the varieties of squash listed as BE foods to ''summer, coat protein-mediated virus-resistant varieties'' will not have a significant economic impact on a substantial number of small entities.

F. Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The final rule is not intended to have retroactive effect. All labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

G. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this action does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 7 CFR Part 66

Agricultural commodities, Food labeling, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Agricultural Marketing Service amends 7 CFR part 66 as set forth below:

PART 66—NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD

■ 1. The authority citation for part 66 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Revise § 66.6 to read as follows:

§ 66.6 List of bioengineered foods.

The List of Bioengineered Foods consists of the following: Alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh varieties), potato, salmon (AquAdvantage®), soybean, squash (summer, coat protein-mediated virus-resistant varieties), sugarbeet, and sugarcane (Bt insect-resistant varieties).

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–26059 Filed 11–28–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2023–0012]

RIN 1557–AF23

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1819]

RIN 7100–AG19

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Consumer Financial Protection Bureau (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) jointly issued final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage increase in the CPI–W to the dollar amount that

would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the CPI–W in effect as of June 1, 2023, the exemption threshold will increase from $31,000 to $32,400, effective January 1, 2024.

DATES: This final rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

OCC: MaryAnn Nash, Counsel, Chief Counsel's Office, Office of the Comptroller of the Currency, at (202) 649–6287. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Anna Boadwee and Adrien Fernandez, Attorney-Advisors, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended TILA to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the Agencies jointly issued a final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule.[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The OCC's, the Board's, and the Bureau's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

The OCC's, the Board's, and the Bureau's regulations,[6] and their accompanying interpretations,[7] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.[8]

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the OCC, the Board, and the Bureau each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI–W (HPML Small Dollar Adjustment Calculation Rule).[9] The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2024 Adjustment and Commentary Revision

Effective January 1, 2024, the exemption threshold amount will increase from $31,000 to $32,400. This amount is based on the CPI–W in effect on June 1, 2023, which was reported on May 10, 2023 (based on April 2023 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 10, 2023, reflects a 4.6 percent increase in the CPI–W from April 2022 to April 2023. Accordingly, the 4.6 percent increase in the CPI–W from April 2022 to April 2023 results in an exemption threshold amount of $32,400, after rounding. The OCC, the Board, and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.xi to 12 CFR part 34, Appendix C to Subpart G (OCC);
- Comment 43(b)(2)–3.xi to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–3.xi to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2024, through December 31, 2024, the threshold amount is $32,400. These revisions are effective January 1, 2024.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency

[1] Public Law 111–203, section 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (Bureau).

[7] 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[8] *See* 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 and –2 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 and –2 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 and –2 (Bureau).

[9] *See* 81 FR 86250 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2023, were reported on May 10, 2023, and reflect economic conditions in April 2023.

finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the OCC, the Board, and the Bureau have determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The information collections contained in Regulation Z which implements TILA are approved by OMB under Control number 3170–0015. The current approval for this control number expires on May 31, 2026. In accordance with the Paperwork Reduction Act of 1995,[13] the OCC, the Board, and the Bureau reviewed this final rule. The OCC, the Board, and the Bureau have determined that this rule does not create any new information collections or substantially revise any existing collections.

Unfunded Mandates Reform Act

As a general matter, the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this final rule, the OCC has not prepared a budgetary impact statement for the final rule under the UMRA.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

OCC Congressional Review Act Statement

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[14] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[15]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[16] The OCC currently supervises approximately 1,060 national banks, federal savings associations, trust companies and federal branches and agencies of foreign banks (collectively, banks).[17] Based on the CPI–W in effect as of June 1, 2023, this final rule will increase the exemption threshold from $31,000 to $32,400, effective January 1, 2024. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

For the same reasons set forth above, the OCC is adopting this final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to ''any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [18] In light of the fact that the final rule will have a *de minimis* impact, delaying the effective date of the final rule is unnecessary.

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 34

Accounting, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. In Appendix C to Subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* paragraph 34.203(b)(2) is revised to read as follows:

Appendix C to Subpart G—OCC Interpretations

* * * * *

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

[14] 5 U.S.C. 801 *et seq.*

[15] 5 U.S.C. 801(a)(3).

[16] 5 U.S.C. 804(2).

[17] Based on data as of February 28, 2023.

[18] 5 U.S.C. 808(2).

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 34.203 applies. *See* § 34.203(b) and (d)(7).

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* paragraph 43(b)(2) is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.43—Appraisals for Higher-Risk Mortgage Loans

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and (d)(7).

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* paragraph 35(c)(2)(ii) is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

xi. From January 1, 2024, through December 31, 2024, the threshold amount is $32,400.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan unless another exemption from the requirements of § 1026.35(c)

applies. *See* § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

[FR Doc. 2023–25047 Filed 11–28–23; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1823]

RIN 7100–AG71

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2024. The annual indexation of these amounts is required notwithstanding the Board's action in March 2020 of setting all reserve requirement ratios to zero. The reserve requirement exemption amount for 2023 will remain $36.1 million, unchanged for 2024, consistent with the Federal Reserve Act (the ''Act''). The Board is amending Regulation D to set the amount of the low reserve tranche at $644.0 million (decreased from $691.7 million in 2023). The adjustment to the low reserve tranche is derived using a statutory formula specified in the Act. The annual indexation of the reserve requirement exemption amount and low reserve tranche is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

DATES:

Effective date: December 29, 2023.

Compliance date: The new low reserve tranche will apply beginning January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202/263–4877), Legal Division; Kristen Payne, Lead Financial Institution and Policy Analyst (202/452–2872), Division of Monetary Affairs; for users of TTY/TRS, please call 711 from any telephone, anywhere in the United States, or (202) 263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. The Board's actions with respect to this provision are discussed below.

I. Reserve Requirements

Section 19(b) of the Act authorizes different ranges of reserve requirement ratios depending on the amount of transaction account balances at a depository institution. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement ratio shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period.

Total reservable liabilities of all depository institutions decreased by 8.6 percent, from $20,841 billion to $19,057 billion, between June 30, 2022, and June 30, 2023.[1] Accordingly, the reserve requirement exemption amount for 2024 will remain at $36.1 million, unchanged from its level in 2023.[2]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, may be subject to a reserve requirement ratio of not more than 3 percent (and which may be zero). Transaction account balances over the low reserve tranche may be subject to a reserve requirement ratio of not more than 14 percent (and which may be zero). Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions decreased 8.6 percent, from $17,549 billion to $16,037 billion, between June 30, 2022, and June 30, 2023.[3] Accordingly, the Board is amending Regulation D to set the low reserve tranche for net transaction accounts for 2024 at $644.0 million, a decrease of $47.7 million from 2023. The new low reserve tranche will be effective for all depository institutions beginning January 1, 2024.

Effective March 26, 2020, the Board reduced reserve requirement ratios on all net transaction accounts to zero percent, eliminating reserve requirements for all depository institutions. The annual indexation of the reserve requirement exemption amount and the low reserve tranche for 2024 is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

II. Regulatory Analysis

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount and the low reserve tranche serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so

[1] The June 30th value for 2022 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

[2] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

[3] The June 30th value for 2022 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[4] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[5] the Board reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.4 is amended by revising paragraph (f) to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios in table 1 to this paragraph (f) to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

TABLE 1 TO PARAGRAPH (f)

Reservable liability	Reserve requirement
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($36.1 million).	
Over reserve requirement exemption amount ($36.1 million) and up to low reserve tranche ($644.0 million).	0 percent of amount.
Over low reserve tranche ($644.0 million)	$0 plus 0 percent of amount over $644.0 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–26212 Filed 11–28–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–1824]

RIN 7100–AG72

Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that the Board annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis (BEA). Based on the change in the Gross Domestic Product Price Index as of September 28, 2023, the total consolidated asset threshold will be $12,517,000,000 through December 31, 2024.

DATES:

Effective date: December 29, 2023.

Applicability date: The adjusted threshold for total consolidated assets will apply beginning on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202/263–4877), Legal Division; or Kelsey Cassidy, Financial Institutions Policy Analyst (202/465–6817), Reserve Bank Operations and Payments Systems Division. For users of TTY–TRS, please contact 711 from any telephone, anywhere in the United States or (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the Reserve Banks. Under section 5 of the Federal Reserve Act [1] and Regulation I,[2] a member bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six percent of the member bank's capital and surplus. The member bank must pay for one-half of this subscription when the Reserve Bank issues the capital stock, while the remaining half of the subscription shall be subject to call by the Board.[3]

Section 7(a)(1) of the Federal Reserve Act [4] provides that Reserve Bank stockholders with $10 billion or less in total consolidated assets shall receive a six percent dividend on paid-in capital stock, while stockholders with more than $10 billion in total consolidated assets shall receive a dividend on paid-in capital stock equal to the *lesser* of six percent and ''the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend.'' Section 7(a)(1) requires that the Board adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index, published by the BEA.

Regulation I implements section 7(a)(1) of the Federal Reserve Act by (1) defining the term ''total consolidated

[4] 5 U.S.C. 603 and 604.

[5] 44 U.S.C. 3506; 5 CFR part 1320.

[1] 12 U.S.C. 287.

[2] 12 CFR 209.4(a).

[3] 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

[4] 12 U.S.C. 289(a)(1).

assets,'' [5] (2) incorporating the statutory dividend rates for Reserve Bank stockholders [6] and (3) providing that the Board shall adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index.[7] The Board has explained that it ''expects to make this adjustment [to the threshold for total consolidated assets] using the final second quarter estimate of the Gross Domestic Product Price Index for each year, published by the Bureau of Economic Analysis.'' [8]

II. Adjustment

The Board annually adjusts the $10 billion total consolidated asset threshold based on the change in the Gross Domestic Product Price Index between the second quarter of 2015 (the baseline year) and the second quarter of the current year.[9] The second quarter 2023 Gross Domestic Product Price Index estimate published by the BEA in September 2023 (121.789) is 25.17 percent higher than the second quarter 2015 Gross Domestic Product Price Index estimate published by the BEA in September 2023 (97.302). Based on this change in the Gross Domestic Product Price Index, the threshold for total consolidated assets in Regulation I will be $12,517,000,000 as of January 1, 2024.

III. Administrative Law Matters

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments that are required by statute and Regulation I and are consistent with a method previously set forth by the Board.[10] Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the Board has reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation I, 12 CFR part 209, as follows:

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

■ 2. In part 209, remove all references to ''$12,124,000,000'' and add in their place wherever they appear ''$12,517,000,000''.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–26213 Filed 11–28–23; 8:45 am]

BILLING CODE 6210–01–P

[5] 12 CFR 209.1(d)(3).

[6] 12 CFR 209.4(e), (c)(1)(ii), and (d)(1)(ii); 209.2(a); and 209.3(d)(5).

[7] 12 CFR 209.4(f).

[8] 81 FR 84415, 84417 (Nov. 23, 2016).

[9] The BEA makes ongoing revisions to its estimates of the Gross Domestic Product Price Index for historical calendar quarters. The Board calculates annual adjustments from the baseline year (rather than from the prior-year total consolidated asset threshold) to ensure that the adjusted total consolidated asset threshold accurately reflects the cumulative change in the BEA's most recent estimates of the Gross Domestic Product Price Index.

[10] *See* 12 CFR 209.4(f) and n. 8 and accompanying text, *supra.*

[11] 5 U.S.C. 603 and 604.

[12] 44 U.S.C. 3506; 5 CFR part 1320.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1821]

RIN 7100–AG70

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1013

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Consumer Financial Protection Bureau (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The Board and the Bureau (collectively, the Agencies) are finalizing amendments to the official interpretations and commentary for the Agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Agencies, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2023, the exemption threshold will increase from $66,400 to $69,500 effective January 1, 2024. Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Agencies are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors

of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Anna Boadwee and Adrien Fernandez, Attorney-Advisors, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in the CLA for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, the Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.[5] Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation M Adjustment Calculation Rule).[9] The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2024 Adjustment and Commentary Revision

Effective January 1, 2024, the exemption threshold amount is increased from $66,400 to $69,500. This amount is based on the CPI–W in effect on June 1, 2023, which was reported on May 10, 2023 (based on April 2023 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 10, 2023, reflects a 4.6 percent increase in the CPI–W from April 2022 to April 2023. Accordingly, the 4.6 percent increase in the CPI–W from April 2022 to April 2023 results in an exemption threshold amount of $69,500, after rounding. The Agencies are revising the commentaries to their respective regulations to add new comment 2(e)–11.xv to state that, from January 1, 2024, through December 31, 2024, the threshold amount is $69,500. These revisions are effective January 1, 2024.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Agencies have determined

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[5] *See* 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (Bureau).

[8] *See* comments 2(e)–9 in Supplements I of 12 CFR parts 213 and 1013.

[9] *See* 81 FR 86256 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2023, were reported on May 10, 2023, and reflect economic conditions in April 2023.

[11] 5 U.S.C. 553(b)(B).

that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The information collections contained in Regulation Z which implements TILA are approved by OMB under Control number 3170–0006. The current approval for this control number expires on October 31, 2025. In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. The Agencies have determined that this rule does not create any new information collections or substantially revise any existing collections.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Administrative practice and procedure, Advertising, Consumer protection, Reporting and recordkeeping requirements, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

[12] 5 U.S.C. 603(a) and 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 2. In Supplement I to Part 213, under *Section 213.2—Definitions,* revise *2(e) Consumer Lease,* as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation.

The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 sec. 1100E, 124 Stat. 1376.

■ 4. In Supplement I to part 1013, under *Section 1013.2—Definitions,* revise *2(e)—Consumer Lease* to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1820]

RIN 7100–AG69

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Consumer Financial Protection Bureau (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The Board and the Bureau (collectively, the Agencies) are publishing final rules amending the official interpretations and commentary for the Agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street

Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Agencies, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2023, the exemption threshold will increase from $66,400 to $69,500 effective January 1, 2024. Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Agencies are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the Rules section of this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: *Board:* Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Anna Boadwee and Adrien Fernandez, Attorney-Advisors, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in TILA for exempt consumer credit transactions,[1] and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, the Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA, 12 CFR part 1026, substantially duplicating the Board's Regulation Z.[5] Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation Z Adjustment Calculation Rule).[9] The Regulation Z Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation Z Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2024 Adjustment and Commentary Revision

Effective January 1, 2024, the exemption threshold amount is increased from $66,400 to $69,500. This amount is based on the CPI–W in effect on June 1, 2023, which was reported on

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[5] *See* 76 FR 79768 (Dec. 22, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 226.3(b)(1)(ii) (Board) and 12 CFR 1026.3(b)(1)(ii) (Bureau).

[8] *See* comments 3(b)–1 in supplements I of 12 CFR parts 226 and 1026.

[9] *See* 81 FR 86260 (Nov. 30, 2016).

May 10, 2023 (based on April 2023 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 30 percent of the U.S. population. The CPI–W reported on May 10, 2023, reflects a 4.6 percent increase in the CPI–W from April 2022 to April 2023. Accordingly, the 4.6 percent increase in the CPI–W from April 2022 to April 2023 results in an exemption threshold amount of $69,500, after rounding. The Agencies are revising the commentaries to their respective regulations to add new comment 3(b)–3.xv to state that, from January 1, 2024, through December 31, 2024, the threshold amount is $69,500. These revisions are effective January 1, 2024.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation Z Adjustment Calculation Rule. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

The information collections contained in Regulation Z which implements TILA are approved by OMB under Control number 3170–0015. The current approval for this control number expires on May 31st, 2026. In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. The Agencies have determined that this rule does not create any new information collections or substantially revise any existing collections.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l) and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions,* revise *3(b) Credit over applicable threshold amount,* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2023, were reported on May 10, 2023, and reflect economic conditions in April 2023.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt, and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is

exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph 4.iv.B(1) of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph 4.iv.B(1) of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011, to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011, to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i. of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* revise *3(b)—Credit Over Applicable Threshold Amount* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011, through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012, through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013, through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014, through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015, through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016, through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017, through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018, through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019, through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020, through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021, through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022, through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023, through December 31, 2023, the threshold amount is $66,400.

xv. From January 1, 2024, through December 31, 2024, the threshold amount is $69,500.

4. *Open-end credit.* i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt, and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to

extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.1 of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.1 of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.* i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011, to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011, to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

[FR Doc. 2023–25048 Filed 11–28–23; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF93

Special Assessment Pursuant to Systemic Risk Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement a special assessment to recover the loss to the Deposit Insurance Fund (DIF or Fund) arising from the protection of uninsured depositors following the closures of Silicon Valley Bank, Santa Clara, CA, and Signature Bank, New York, NY. The FDIC will collect the $16.3 billion special assessment at a quarterly rate of 3.36 basis points, multiplied by an insured depository institution's (IDI) estimated uninsured deposits, reported for the quarter that ended December 31, 2022, adjusted to exclude the first $5 billion in estimated uninsured deposits from the IDI, or for IDIs that are part of a holding company with one or more subsidiary IDIs, at the banking organization level. The FDIC will collect the special assessment over eight quarterly assessment periods, although the collection period may change due to updates to the estimated loss pursuant to the systemic risk determination or if assessments collected change due to corrective amendments to the amount of uninsured deposits reported for the December 31, 2022, reporting period.

DATES: The final rule is effective on April 1, 2024, with the first collection for the special assessment reflected on the invoice for the first quarterly assessment period of 2024 (*i.e.,* January 1 through March 31, 2024), with a payment date of June 28, 2024.

FOR FURTHER INFORMATION CONTACT: Division of Insurance and Research:

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I. Background

A. Silicon Valley Bank, Signature Bank, and the Systemic Risk Exception

On March 10, 2023, Silicon Valley Bank was closed by the California Department of Financial Protection and Innovation, followed by the closure of Signature Bank by the New York State Department of Financial Services. The FDIC was appointed as the receiver for both institutions.[1]

Section 13(c)(4)(G) of the FDI Act permits the FDIC to take action or provide assistance to an IDI for which the FDIC has been appointed receiver as necessary to avoid or mitigate adverse effects on economic conditions or financial stability, following a recommendation by the FDIC Board of Directors (Board), with the written concurrence of the Board of Governors of the Federal Reserve System (Board of Governors), and a determination of systemic risk by the Secretary of the U.S. Department of Treasury (Treasury) (in consultation with the President).[2]

On March 12, 2023, the Secretary of the Treasury, acting on the recommendation of the Board and Board of Governors, and after consultation with the President, invoked the statutory systemic risk exception to allow the FDIC to complete its resolution of both Silicon Valley Bank and Signature Bank in a manner that fully protects depositors.[3] The full protection of depositors, rather than imposing losses on uninsured depositors, was intended to strengthen public confidence in the nation's banking system.

On March 12 and 13, 2023, the FDIC transferred deposits—both insured and uninsured—and substantially all assets of these banks to newly created, full-service FDIC-operated bridge banks, Silicon Valley Bridge Bank, N.A. (Silicon Valley Bridge Bank) and Signature Bridge Bank, N.A. (Signature Bridge Bank), in an action designed to protect depositors of these banks.[4] The transfer of deposits was completed under the systemic risk exception declared on March 12, 2023.

On March 19, 2023, the FDIC announced it entered into a purchase and assumption agreement for substantially all deposits and certain loan portfolios of Signature Bridge Bank.[5] On March 27, 2023, the FDIC entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company (First Citizens), with loss-sharing provided on the commercial loans it purchased from Silicon Valley Bridge Bank.[6]

B. Legal Authority and Policy Objectives

Under section 13(c)(4)(G) of the FDI Act, the loss to the DIF arising from the use of a systemic risk exception must be recovered from one or more special assessments on IDIs, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the FDIC determines to be appropriate.[7] As required by the FDI Act, the special assessment, detailed below, is intended and designed to recover the losses to the DIF incurred as the result of the actions taken by the FDIC to protect the uninsured depositors of Silicon Valley Bank and Signature Bank following a determination of systemic risk.[8]

Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses to the DIF as a result of a systemic risk determination. As detailed in the

[1] *See* FDIC PR–16–2023. ''FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California.'' March 10, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23016.html. See also* FDIC PR–18–2023. ''FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY.'' March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23018.html.*

[2] 12 U.S.C. 1823(c)(4)(G). As used in this final rule, the term ''bank'' is synonymous with the term ''insured depository institution'' as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

[3] 12 U.S.C. 1823(c)(4)(G). *See also:* FDIC PR–17–2023. ''Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC.'' March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23017.html. See also:* ''Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response before the Committee on Banking, Housing, and Urban Affairs, United States Senate.'' March 27, 2023. *https://www.fdic.gov/news/speeches/2023/spmar2723.html.*

[4] A bridge bank is a chartered national bank that operates under a board appointed by the FDIC. It assumes the deposits and certain other liabilities and purchases certain assets of a failed bank. The bridge bank structure is designed to ''bridge'' the gap between the failure of a bank and the time when the FDIC can stabilize the institution and implement an orderly resolution.

[5] FDIC PR–21–2023. ''Subsidiary of New York Community Bancorp, Inc. to Assume Deposits of Signature Bridge Bank, N.A., From the FDIC.'' March 19, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23021.html.* The purchase and assumption agreement did not include approximately $4 billion of deposits related to the former Signature Bank's digital-asset banking business. The FDIC announced that it would provide these deposits directly to customers whose accounts are associated with the digital-asset banking business.

[6] FDIC PR–23–2023. ''First-Citizens Bank & Trust Company, Raleigh, NC, to Assume All Deposits and Loans of Silicon Valley Bridge Bank, N.A., From the FDIC.'' March 26, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23023.html.*

[7] 12 U.S.C. 1823(c)(4)(G)(ii)(I).

[8] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

sections that follow, and as required by section 13(c)(4)(G) of the FDI Act, the FDIC considered the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, economic conditions, the effects on the industry, and such other factors as the FDIC deemed appropriate and relevant to the action taken or assistance provided.[9]

C. The Proposed Rule

On May 11, 2023, the Board approved a notice of proposed rulemaking (the proposed rule, or proposal) to implement a special assessment, as required by the FDI Act, to recover the loss to the DIF arising from the protection of uninsured depositors following the closures of Silicon Valley Bank and Signature Bank.[10] The FDIC proposed to collect a special assessment that would be approximately equal to the losses attributable to the protection of uninsured depositors at these two failed banks, which were estimated to total $15.8 billion.

The FDIC proposed an annual special assessment rate that would be derived by dividing the loss estimate attributable to the protection of uninsured depositors by the assessment base calculated for all IDIs subject to the special assessment. The proposed assessment base (special assessment base) was equal to an IDI's estimated uninsured deposits as reported in the Consolidated Reports of Condition and Income (Call Report) or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) as of December 31, 2022, adjusted to exclude the first $5 billion of uninsured deposits at the banking organization level.[11]

In response to the proposal, the FDIC received 312 comment letters from depository institutions, depository institution holding companies, trade associations, members of Congress, and other interested parties.[12] As further detailed below, the majority of commenters expressed support for the proposal and for the scope of application of the proposed rule, including the $5 billion deduction applied to the special assessment base. Other comment letters suggested the exclusion, or different treatment, of certain types of uninsured deposits included in the special assessment base, different reporting dates of estimated uninsured deposits used to calculate the assessment base, or adjustment of the $5 billion deduction from the special assessment base. Commenters additionally discussed a range of other matters that are addressed in the relevant sections below.

II. The Final Rule

A. Description of the Final Rule

After careful consideration of the comments received on the proposal and analysis of the applicable statutory factors, the FDIC is adopting, as final, the proposed special assessment, with clarifications to promote transparency and a modification to apply any corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period to the calculation of the special assessment, following adoption of the final rule.

The special assessment implemented through this final rule will recover the loss to the DIF arising from the protection of uninsured depositors following the closures of Silicon Valley Bank and Signature Bank. The total amount collected for the special assessment will be approximately equal to the estimated losses attributable to the protection of uninsured depositors at these two failed banks, which are currently estimated to total $16.3 billion.

The majority of commenters expressed support for the proposal and for the scope of application, including the $5 billion deduction applied to the assessment base for the special assessment. While some commenters broadly objected to the collection of a special assessment, the FDIC is required by the FDI Act to take this action in connection with the systemic risk determination announced on March 12, 2023.[13] In the FDIC's view, the final rule, consistent with the proposed rule, reflects an appropriate balancing of the goal of applying the special assessment to the types of entities that benefited the most from the protection of uninsured depositors provided under the determination of systemic risk while ensuring equitable, transparent, and consistent treatment. The final rule, consistent with the proposed rule, also allows for payments to be collected over an extended period of time in order to reduce the likelihood of overcollecting and to mitigate the liquidity effects of the special assessment by requiring smaller, consistent quarterly payments.

B. Estimated Special Assessment Amount

To determine the cost of the failures attributable to the cost of covering uninsured deposits pursuant to the determination of systemic risk, the FDIC determined the percentage of deposits that were uninsured at the time of failure and applied that percentage to the total cost of the failure for each bank.

At Signature Bank, for which 67 percent of deposits were uninsured at the time of failure, the portion of the total estimated loss of $0.9 billion that is attributable to the protection of uninsured depositors is $0.6 billion. The cost estimate for the sale of the Signature Bridge Bank to New York Community Bancorp decreased following the issuance of the proposal from $2.4 billion to approximately $0.9 billion. The decline in the cost estimate was primarily attributable to recoveries from assets in receivership that were higher than previously estimated offset, in part, by higher costs of liabilities assumed by the receivership.

At Silicon Valley Bank, for which 88 percent of deposits were uninsured at the time of failure, the portion of the total estimated loss of $17.8 billion that is attributable to the protection of uninsured depositors is $15.7 billion. The cost estimate for the sale of the Silicon Valley Bridge Bank to First Citizens was revised following the issuance of the proposal from $16.1 billion to approximately $17.8 billion mainly due to recoveries from assets in receivership that were less than previously anticipated and higher costs of liabilities assumed by the receivership.

The revised cost estimates form the basis for the current special assessment calculation in this final rule. In total, of the $18.7 billion in estimated losses at the two banks and incurred by the DIF, the estimated loss attributable to the protection of uninsured depositors is $16.3 billion, an increase of approximately $500 million from the estimate of $15.8 billion described in the proposal.

As with all failed bank receiverships, these loss estimates will be periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred. The exact amount of losses incurred will be determined when the FDIC terminates the receiverships. As noted below, the amount of the special assessment will be adjusted as the loss estimates change.

[9] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[10] *See* 88 FR 32694 (May 22, 2023).

[11] As used in this final rule, the term ''banking organization'' includes IDIs that are not subsidiaries of a holding company as well as holding companies with one or more subsidiary IDIs.

[12] *See* comments on the proposal, available at *https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-special-assessments-systemic-risk-determination-3064-af93.html.*

[13] 12 U.S.C. 1823(c)(4)(G).

Comments Received on the Estimated Special Assessment Amount

One commenter suggested that the special assessment should recover the entire amount of estimated losses. As proposed, and as required by statute, the FDIC will recover through the special assessment the $16.3 billion estimated loss incurred as a result of the actions taken by the FDIC pursuant to the determination of systemic risk, which, in the case of the determination pursuant to the closures of Silicon Valley Bank and Signature Bank, was to protect uninsured depositors.

C. Rate for the Special Assessment

The proposed special assessment rate was derived by dividing the loss estimate attributable to the protection of uninsured depositors by the assessment base calculated for all IDIs subject to the special assessment as of December 31, 2022. As described in detail below, the proposed assessment base was equal to estimated uninsured deposits reported for the quarter that ended December 31, 2022, after applying the $5 billion deduction.

Under the final rule, the FDIC will impose a special assessment rate equal to approximately 13.4 basis points annually, an increase from the 12.5 basis point annual rate in the proposal.[14] Amendments to reported estimated uninsured deposits filed since the adoption of the proposed rule have resulted in a lower total assessment base. The decline in the total assessment base combined with the increase in the cost estimate have resulted in a higher annual rate relative to the proposal.[15] As of November 2, 2023, the total assessment base was $6.0 trillion. The special assessment rate will not change following the date of adoption of this final rule through the duration of the initial eight-quarter collection period.

The resulting quarterly rate is 3.36 basis points, or an annual rate of approximately 13.4 basis points. Over the initial eight-quarter collection period, the FDIC projects that it will collect an amount sufficient to recover estimated losses attributable to the protection of uninsured depositors of Silicon Valley Bank and Signature Bank, which are currently estimated to total $16.3 billion, totaling approximately $2.0 billion per quarter.

D. Assessment Base and Scope of Application for the Special Assessment

Under the proposal, each IDI's assessment base for the special assessment would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 for the quarter that ended December 31, 2022, after applying the $5 billion deduction.[16] As a result of this deduction, most small IDIs and IDIs that are part of a small banking organization would not pay anything towards the special assessment. The special assessment would not be applicable to any banking organizations with total assets under $5 billion.

1. Comments Received on the Calculation of the Special Assessment

The majority of commenters stated that community banks should be exempt from the special assessment. The FDIC received 63 comments related to the calculation of the special assessment base and the scope of application for the special assessment, or the calculation of the special assessment rate. Some of these commenters stated that certain groups of banks should be exempt from or pay less of the special assessment, while one commenter recommended that all banks be subject to the special assessment.[17] One commenter said that U.S. global systemically important banks (GSIBs) did not benefit from the actions taken under the determination of systemic risk and that although GSIBs served as a source of strength to the banking sector, they are responsible for a disproportionate share of the special assessment.

One commenter noted that given that the FDIC is required by statute to recover the estimated amount of loss attributable to the protection of uninsured depositors following the determination of systemic risk, any changes to the proposed special assessment base will necessarily redistribute the obligation among banking organizations subject to the special assessment.

Several commenters recommended alternative measures for the special assessment base, including total assets, total deposits, uninsured deposits as a percentage of total deposits, an institution's regular risk-based deposit insurance assessment base, or to otherwise take a more risk-based approach to calculating the special assessment base. One commenter recommended a more detailed approach, stating that the special assessment base should be the entire deposit base, or alternatively the entire assessment base applied for regular quarterly deposit insurance assessments, for the largest institutions and uninsured deposits for all other banks, and that the rate for the special assessment should incorporate an adjusted tangible equity capital ratio and a scalar to factor in interest rate risk.

With the rapid collapse of Silicon Valley Bank and Signature Bank in the space of 48 hours, concerns arose that risk could spread more widely to other institutions and that the financial system as a whole could be placed at risk. Shortly after Silicon Valley Bank was closed on March 10, 2023, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds.

The extent to which IDIs rely on uninsured deposits for funding varies significantly. Uninsured deposits were used to fund nearly three-quarters of assets at Silicon Valley Bank and Signature Bank. On average, the largest banking organizations by asset size fund a larger share of assets with uninsured deposits, as depicted in Table 1 below, based on data as of December 31, 2022, the most recently available date reflecting the amount of uninsured deposits in each institution near or at the time the determination of systemic risk was made. Among banking organizations that report uninsured deposits, those with total assets between

[14] The proposed rule noted that the special assessment rate in the proposal was subject to change prior to any final rule depending on any adjustments to the loss estimate, mergers or failures, or amendments to reported estimates of uninsured deposits. Estimates of the special assessment rate and expected effects in the proposed rule generally reflected any amendments to data reported through February 21, 2023, for the reporting period that ended December 31, 2022, while estimates for this final rule reflect any amendments as of November 2, 2023. Given the closure of First Republic Bank, San Francisco, CA, announced on May 1, 2023, estimates in the proposed rule and this final rule exclude First Republic Bank in addition to Silicon Valley Bank and Signature Bank. *See* FDIC: PR–34–2023. ''JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California.'' May 1, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23034.html.*

[15] The special assessment rate, base, and expected effects in this final rule reflect any amendments to data as of November 2, 2023, for the reporting period that ended December 31, 2022.

[16] Estimated uninsured deposits are reported in Memoranda Item 2 on Schedule RC–O, Other Data for Deposit Insurance Assessments of both the Call Report and FFIEC 002. IDIs with less than $1 billion in total assets as of June 30, 2021, were not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

[17] Among the groups of banks commenters stated should be exempt from the special assessment were: banks under a range of other asset or uninsured deposit thresholds, banks not considered systemically important financial institutions, Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), rural banks, and mutual banks.

$1 billion and $5 billion are generally the least reliant on uninsured deposits for funding, with uninsured deposits averaging 27.9 percent of assets, compared with the largest banking organizations with total assets greater than $250 billion, which had uninsured deposits that averaged 35.1 percent of assets.

TABLE 1—AVERAGE SHARE OF ASSETS FUNDED BY UNINSURED DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE, BASED ON DATA FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

[Percent]

Asset size of banking organization	Average share of assets funded by uninsured deposits [percent]
$1 to $5 Billion	27.9
$5 to $10 Billion	28.9
$10 to $50 Billion	32.4
$50 to $250 Billion	33.3
Greater than $250 Billion	35.1

[1] Table reflects data for the December 31, 2022, reporting period, and incorporates amendments, mergers, acquisitions and failures through November 2, 2023.

Uninsured deposit concentrations of IDIs, meaning the percentage of domestic deposits that are uninsured, also vary significantly. At Silicon Valley Bank, 88 percent of deposits were uninsured at the point of failure compared to 67 percent at Signature Bank. On average, the largest banking organizations by asset size reported significantly greater uninsured deposit concentrations relative to smaller banking organizations, as illustrated in Table 2 below, based on data as of December 31, 2022. Banking organizations with total assets between $1 billion and $5 billion generally reported the lowest percentage of uninsured deposits to total domestic deposits, averaging 33.0 percent, compared with the largest banking organizations with total assets greater than $250 billion, which averaged 50.4 percent.

TABLE 2—UNINSURED DEPOSITS AS A PERCENTAGE OF TOTAL DOMESTIC DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE, BASED ON DATA FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

[Percent]

Asset Size of banking organization	Ratio of uninsured deposits to total domestic deposits [percent]
$1 to $5 Billion	33.0
$5 to $10 Billion	35.0
$10 to $50 Billion	40.3
$50 to $250 Billion	42.8
Greater than $250 Billion	50.4

[1] Reflects reporting amendments to estimated uninsured deposits, mergers, acquisitions, and failures through November 2, 2023.

Following the announcement of the systemic risk determination, the FDIC observed a significant slowdown in uninsured deposits leaving certain institutions, evidence that the systemic risk determination helped stem the outflow of these deposits while providing stability to the banking industry.

As of March 31, 2023, banks in all asset size groups experienced quarterly declines in uninsured deposit balances, but these declines were particularly severe and widespread among banks between $50 billion and $250 billion in total assets. In addition, between December 31, 2022, and March 31, 2023, the eight U.S. GSIBs reported a weighted average decline in uninsured deposits of 2.1 percent, albeit slower than the industry average of approximately eight percent. However, changes in uninsured deposit balances over this time period varied widely for the GSIBs. Two of the eight GSIBs experienced growth in uninsured deposits of 2.6 percent and 2.0 percent over this period while the other six GSIBs experienced declines, some significant, ranging between less than two percent to nearly 17 percent.

Defining the assessment base for the special assessment as estimated uninsured deposits reported as of December 31, 2022, and deducting $5 billion from a banking organization's assessment base, serves several purposes. First, banking organizations that reported $5 billion or less in estimated uninsured deposits as of December 31, 2022, would not be subject to the special assessment. Banking organizations that reported more than $5 billion in estimated uninsured deposits would pay based on the marginal amounts of uninsured deposits they reported, helping to mitigate a ''cliff effect'' that might otherwise apply if a different method, such as applying an asset size threshold, were used to determine applicability, and thereby ensuring more equitable treatment. Otherwise, a situation may arise in which a banking organization just over a particular size threshold would pay a special assessment, while a banking organization just below such size threshold would pay none.

In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs but for the determination of systemic risk. Indeed, shortly after Silicon Valley Bank was

closed, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The failure of Silicon Valley Bank and the impending failure of Signature Bank raised concerns that, absent immediate assistance for uninsured depositors, there could be negative knock-on consequences for similarly situated institutions, depositors and the financial system more broadly. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. With the $5 billion deduction from the assessment base, the banks that benefited the most—banks of larger asset sizes and that hold greater amounts of uninsured deposits—will be responsible for paying the special assessment.

Second, the $5 billion deduction from the assessment base results in most small IDIs and IDIs that are part of a small banking organization not paying anything towards the special assessment. The special assessment is not applicable to any banking organizations with total assets under $5 billion.[18]

Finally, deducting $5 billion from the assessment base of estimated uninsured deposits at the banking organization level rather than at the IDI level for banking organizations with more than one subsidiary IDI ensures that banking organizations with similar amounts of estimated uninsured deposits pay a similar special assessment, regardless of banking organization structure. For example, a banking organization with multiple IDIs with large amounts of estimated uninsured deposits will not have an advantage over other banking organizations with only one subsidiary IDI with a similarly large amount of estimated uninsured deposits because instead of excluding $5 billion of estimated uninsured deposits for each IDI in one banking organization, the $5 billion deduction will be distributed across multiple affiliated IDIs.

In implementing special assessments, the FDI Act requires the FDIC to consider the types of entities that benefit from any action taken or assistance provided pursuant to the determination of systemic risk.[19] The assessment base of estimated uninsured deposits with the $5 billion deduction ensures that the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment. For these reasons, the FDIC is adopting the proposed exclusion of the first $5 billion from estimated uninsured deposits from the assessment base for the special assessment, without change.

2. Comments on the Reporting Date of Uninsured Deposits for Special Assessment Base

Under the proposal, each IDI's assessment base for the special assessment would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 for the December 31, 2022, reporting period, after applying the $5 billion deduction. The FDIC sought comment on whether the special assessment base should be equal to estimated uninsured deposits reported as of December 31, 2022, or reported as of some other date, and the reasons for using a different date.

Two commenters expressed support for the proposed December 31, 2022, reporting date for uninsured deposits to determine the special assessment base. Thirteen commenters, including two trade associations and three letters from members of Congress, requested that estimated uninsured deposits reported as of a more recent date than December 31, 2022, be used to calculate the assessment base for the special assessment. Most of these commenters suggested an alternative date, such as March 31, 2023, or June 30, 2023, while others suggested that the assessment base should reference the estimated uninsured deposits reported as of each quarter-end during the collection period or did not specify a date. Some commenters that supported a later reporting date said that institutions, particularly mid-sized and regional banks, that reported declines in uninsured deposit balances after December 31, 2022, should not be charged a special assessment on uninsured deposit balances that they no longer hold or that are now insured.

In the FDIC's view, estimated uninsured deposits as of December 31, 2022, most closely approximate an institution's vulnerability to significant deposit withdrawals in the absence of the determination of systemic risk, and therefore reflect the institutions that most benefited from such determination. An assessment base that is calculated using the amount of uninsured deposits as of December 31, 2022, would result in transparent and consistent payments, best approximate an institution's vulnerability to deposit withdrawals, and would result in a more simplified framework for calculating the special assessment. For these reasons, the FDIC is adopting as final the proposed special assessment base of estimated uninsured deposits as of December 31, 2022.

3. Comments Recommending Exclusions From Uninsured Deposits for Special Assessment Base

Under the proposed rule, the assessment base for the special assessment would be adjusted to exclude the first $5 billion from estimated uninsured deposits reported as of December 31, 2022, applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs. The FDIC sought comment on whether it should consider an exemption for specific types of deposits from the special assessment base, and on what basis.

Multiple commenters supported the exclusion of, or different treatment for, certain types of uninsured deposits included in the proposed assessment base for the special assessment of estimated uninsured deposits reported as of December 31, 2022, less the $5 billion deduction.

a. Collateralized Deposits

The FDIC received 25 comments requesting that the FDIC either exclude, or provide a different treatment for, collateralized deposits in the calculation of the special assessment base. In particular, commenters requested such treatment for the uninsured portion of public deposits, or deposits of states and political subdivisions that are secured or collateralized as required under state law (also referred to as preferred deposits). These commenters reasoned that collateralized deposits are more stable than other uninsured deposits because they are secured, and therefore pose little risk to the DIF. Seven of these commenters requested the exclusion of additional types of collateralized deposits, including collateralized operational deposits or trust-related deposits that are required to be collateralized under federal or state law (*e.g.,* fiduciary funds awaiting investment or distribution), from the special assessment base.

Banks report preferred deposits annually for the December 31 Call Report date, but they do not report other

[18] Some IDIs that report less than $5 billion in estimated uninsured deposits will be subject to the special assessment if they are part of banking organizations with multiple IDIs that report a combined total of estimated uninsured deposits in excess of $5 billion.

[19] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

types of collateralized deposits such as those mentioned by the commenters.[20] Given that preferred deposits represent only a subset of collateralized deposits, providing an exclusion or different treatment for this subset of deposits would result in preferential treatment for this subset of collateralized deposits on the sole basis that these are the only type of collateralized deposits for which data were collected.

Moreover, even if banks reported data on all collateralized deposits, in the FDIC's view, the presence of collateral does not fully mitigate run risk. Collateral may not always be sufficient to cover the full amount of such a deposit, depending on the economic environment, and particularly in the event of a liquidity crisis during which loss in value may need to be realized. Further, in certain types of resolutions, collateralized deposits reduce the assets available to the FDIC as receiver to satisfy claims, including the FDIC's subrogated claim as deposit insurer, and result in a higher loss to the DIF in the event of a bank failure compared to a bank holding the same level of deposits that are not collateralized.

b. Custody Bank Adjustments

The FDIC received one joint comment from three custody banks stating that the special assessment base should be adjusted to mitigate the disproportionate and unwarranted impact on the custody bank business model and on sound asset-liability and risk management practices. The commenters proposed various adjustments: that the FDIC should allow custody banks to exclude domestic deposit balances placed with the Federal Reserve from the measure of estimated uninsured deposits used to calculate the assessment base for the special assessment; that the FDIC should allow custody banks to deduct 75 percent of the domestic operational deposits [21] from the assessment base for the special assessment; or that the FDIC should retain the regular risk-based assessment methodology for the special assessment while maintaining the exclusion of the first $5 billion in estimated uninsured deposits.

The FDIC disagrees. The banks that benefited most from the assistance provided under the systemic risk determination were large banks and those that held greater amounts of uninsured deposits, regardless of the assets that those deposits were used to fund. Custody banks, especially those whose primary business is fiduciary and custodial and safekeeping, hold large amounts of uninsured deposits and many of those uninsured deposits are from depositors with large deposit balances. Further, while certain deposits held by custody banks, such as operational deposits, may be more stable than non-operational funding, in the event of idiosyncratic stress, counterparties likely would reduce the amount of their operational deposits.[22] The adjustments proposed in the joint comment letter would result in custody banks paying significantly lower amounts of the special assessment despite holding significant amounts of uninsured deposits.

c. Intercompany Deposits

The FDIC received 12 comments requesting the exclusion of, or different treatment for, intercompany deposits in the calculation of the special assessment base. Commenters argued that intercompany deposits, such as the deposits of subsidiaries that are not IDIs, deposits of other affiliates such as sister companies that are not IDIs, or deposits of a parent holding company of the IDI, are stable and present minimal run risk because entities within the banking organization's structure are unlikely to withdraw funds in a crisis. Further, some commenters argued that intercompany deposits would not result in a loss to the DIF because they would not be provided deposit insurance coverage or would not need deposit insurance coverage in the event of the bank's failure. Some commenters noted that the methodology for including intercompany deposits in the assessment base for the special assessment may lead to double-counting certain deposits at the banking organization level for banking organizations with multiple IDIs, to the extent an IDI's deposits with its affiliates are funded with uninsured deposits it has taken from a depositor.

There is no clear evidence that intercompany deposits are more stable relative to other deposits. Organizational structures, board members, governance, and decision making can differ between entities within the same banking organization. Likewise, the behavior of creditors, including uninsured depositors, of each entity can differ. Further, an affiliated entity's deposits at a bank are insured to the same extent as an unaffiliated entity's deposits in the event of the bank's failure. Each depositor is entitled to deposit insurance as permitted by law, and to pro rata receivership distribution on the remaining, uninsured balances. Additionally, it is not possible to accurately estimate the portion of uninsured deposits that are intercompany deposits using existing items on the Call Report.

Deposits are the most common funding source for many banks. Depositors and other creditors are often differentiated by their stability and customer profile characteristics. While some uninsured deposit relationships remain stable when a bank is in good condition, such relationships might become less stable due to their uninsured status if a bank experiences financial problems or if the banking industry experiences stress events.

Any revisions to the methodology for calculating the special assessment base, such as excluding or adjusting for certain types of uninsured deposits, would change the allocation of the special assessment, but the FDIC is required by statute to recover the full amount of the losses to the DIF incurred as the result of the systemic risk determination. As a result, any exclusion for a type of uninsured deposits from the special assessment base would reduce the amount of the special assessment for banking organizations that hold those excluded, uninsured deposits, and increase the assessment burden for all other banks holding other types of uninsured deposits. For this reason, and for the reasons described above, and consistent with the proposal, the FDIC is not excluding any particular type of uninsured deposits from the assessment base for the special assessment.

4. Final Assessment Base for the Special Assessment

Following careful consideration of the comments, and for the reasons described above, the FDIC is adopting as final the proposed assessment base for the special assessment, while applying any corrective amendments to estimated uninsured deposits reported for the December 31, 2022, reporting period in calculating the assessment base. The methodology adopted in this final rule ensures that the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured

[20] Call Report Schedule RC–E, Part I, Memorandum item 1.e. requires reporting of preferred deposits (uninsured deposits of states and political subdivisions in the U.S. which are secured or collateralized as required under state law).

[21] The commenter defined operational deposits as residual cash custody banks hold for their clients in deposit accounts to facilitate day-to-day transactional activities related to client investment assets.

[22] *See* 79 FR at 61502 (Oct. 10, 2014).

deposits paying a higher special assessment.

Consistent with the proposal, each IDI's assessment base for the special assessment will be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 as of December 31, 2022, after applying the $5 billion deduction. The deduction of the first $5 billion from estimated uninsured deposits in the assessment base for the special assessment is applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs.[23]

For a banking organization that has more than one subsidiary IDI, the assessment base for the special assessment is equal to the IDI's total estimated uninsured deposits reported for the quarter that ended December 31, 2022, less its share of the $5 billion deduction, which is based on its share of total estimated uninsured deposits held by all IDI affiliates in the banking organization.[24] Table 3 provides an example of the calculation of the special assessment for a banking organization with three subsidiary IDIs.

TABLE 3—CALCULATION OF THE SPECIAL ASSESSMENT WITHIN A BANKING ORGANIZATION WITH MORE THAN ONE INSURED DEPOSITORY INSTITUTION SUBSIDIARY

[Dollar amounts in millions]

	Column A	Column B	Column C	Column D	Column E
	Estimated uninsured deposits as reported as of December 31, 2022	IDI share of banking organization estimated uninsured deposits [percent]	IDI Share of $5 billion deduction (Column B * $5 billion)	Assessment base for special assessment (Column A −Column C)	IDI share of special assessment (Column D * 26.9 basis points)/ current loss estimate [percent]
IDI A	$50,000	50	$2,500	$47,500	0.79
IDI B	40,000	40	2,000	38,000	0.63
IDI C	10,000	10	500	9,500	0.16

Based on data reported for the quarter that ended December 31, 2022, and as illustrated in Table 4 below, the FDIC estimates that 114 banking organizations, which include IDIs that are not subsidiaries of a holding company and holding companies with one or more subsidiary IDIs and which comprise 81.3 percent of industry assets, will be subject to the special assessment, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion would pay the special assessment, based on data for the December 31, 2022, reporting period.[25]

TABLE 4—BANKING ORGANIZATIONS REQUIRED TO PAY SPECIAL ASSESSMENT, BASED ON DATA REPORTED FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

Asset size of banking organization	Number of banking organizations required to pay special assessment	Percentage of all banking organizations in asset size category required to pay special assessment [percent]	Share of special assessment [percent]	Share of industry assets [percent]
Greater than $50 billion	48	1.1	95.3	74.5
Between $5 and $50 billion	66	1.5	4.7	6.8
Under $5 billion	0	0.0	0.0	0.0
Total	114	2.6	100.0	81.3

[1] Reflects reporting amendments to estimated uninsured deposits, mergers, acquisitions, and failures through November 2, 2023.

E. Prior Period Amendments

Under the proposal, amendments to an IDI's Call Report for the December 31, 2022, reporting period made after the date of adoption of any final rule would not have affected an institution's rate or base for the special assessment.

The FDIC is finalizing this aspect of the rule, as proposed, but in calculating the special assessment, will apply any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's

[23] IDIs with less than $1 billion in total assets as of June 30, 2021, are not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, is zero.

[24] As used in this final rule, the term ''affiliate'' has the same meaning as defined in section 3 of the FDI Act, 12 U.S.C. 1813(w)(6), which references the Bank Holding Company Act (''any company that controls, is controlled by, or is under common control with another company''). *See* 12 U.S.C. 1841(k).

[25] The special assessment rate, base, and expected effects in this final rule reflect any amendments to data as of November 2, 2023, for the reporting period that ended December 31, 2022. These estimates may change depending on any subsequent amendments to reported estimates of uninsured deposits.

review of an institution's reporting methodology (as described below).

Following the issuance of the proposed rule, the FDIC observed that some IDIs were reporting or filing amendments to the reporting of estimated uninsured deposits for the December 31, 2022, reporting period in a manner that is inconsistent with the instructions to the Call Report. For example, some institutions incorrectly reduced the reported amount of uninsured deposits to the extent that they are collateralized by pledged assets; this is incorrect because in and of itself, the existence of collateral has no bearing on the portion of a deposit that is covered by federal deposit insurance. Additionally, some institutions incorrectly reduced the amount of uninsured deposits reported on Schedule RC–O by excluding certain intercompany deposit balances.

The FDIC did not receive any comments on the proposed treatment of prior period amendments. Some commenters, however, raised concerns about the accuracy of the amount of estimated uninsured deposits reported on the Call Report. The FDIC received two comment letters indicating that banks may be reporting uninsured deposits differently, or in an inconsistent manner, and one comment letter indicating that some banks were confused about whether to include collateralized deposits in the amount of estimated uninsured deposits reported on the Call Report.

On July 24, 2023, the FDIC issued a Financial Institution Letter (FIL) on Estimated Uninsured Deposits Reporting Expectations, reiterating longstanding instructions and stating that each IDI is responsible for the accuracy of the data reported in its Call Report and for filing amendments as necessary to ensure Call Report accuracy.[26] The FIL stated that, consistent with the requirement to file accurate Call Reports, IDIs that incorrectly reported uninsured deposits should amend their Call Reports by making the appropriate changes to the data and submitting the revised data file.

As a general matter, the amount of estimated uninsured deposits reported on the Call Report is monitored as one of many indicators of safety and soundness, and its accuracy, as with all items collected on the Call Report, is of the utmost importance. The reported amount of estimated uninsured deposits is also used to determine the amount of estimated insured deposits in calculating the DIF reserve ratio, which is the ratio of the DIF balance to all insured deposits.[27]

The FDIC is conducting a review (Assessment Reporting Review) of the reporting methodology for estimated uninsured deposits and related items on the Call Report because of the importance of these items as indicators of safety and soundness.[28] The Assessment Reporting Review may result in amendments to uninsured deposits and related items reported on the Call Report if the FDIC determines that an institution is not reporting these items in accordance with the instructions. Given the planned Assessment Reporting Review, in calculating this special assessment this final rule applies any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

Under the final rule, the special assessment rate and each banking organization's special assessment base has been calculated using estimated uninsured deposits for the December 31, 2022, reporting period as reported on November 2, 2023.[29] Amendments made to an institution's December 31, 2022, Call Report through November 2, 2023, have been accounted for in the calculations, as proposed. In addition, under the final rule, certain amendments filed after November 2, 2023, will affect the calculation of an institution's special assessment base, as described below.

In particular, if, as part of the FDIC's Assessment Reporting Review of an institution's reporting methodology (described above), the FDIC finds that, as of November 2, 2023, an institution was not reporting uninsured deposits for the December 31, 2022, reporting period in accordance with the Call Report instructions, and the institution files a corrective amendment as a result of the FDIC's review after November 2, 2023, the FDIC will adjust the special assessment base based on such corrective amendment for such institution, and any affiliates, as applicable, for all collection periods. Additionally, if an institution files an amendment to the reporting of estimated uninsured deposits for the December 31, 2022, reporting period after November 2, 2023, and the FDIC finds that such amendment brings the reporting of uninsured deposits into compliance with the Call Report instructions, the FDIC will adjust the special assessment base based on such corrective amendment for such institution, and any affiliates, as applicable, for all collection periods. If such institution is part of a banking organization with multiple subsidiary IDIs, such corrective amendments will also affect the distribution of the $5 billion deduction from the banking organization's assessment base for all collection periods.

Prior period amendments filed after November 2, 2023, that are not the result of corrections to errors or misreporting will not affect an institution's special assessment base. Modifications to an institution's special assessment base will take effect beginning the collection quarter following the date of amendment, and the FDIC will apply such modifications retroactively to the first quarterly collection period, as applicable.

Any retroactive special assessment amount due will be included, in full, on the invoice for the quarter following the date of the amendment. If the amendment resulted in a downward revision of the assessment base for the special assessment, the banking organization will be credited the amount the institution overpaid, with interest, and such amount, including interest, will be applied to any remaining amount of the special assessment due from the banking organization beginning in the quarter following the date of the amendment. In the unlikely event a credit remains after the special assessment collection period has ended, the excess credit amount will be refunded to the banking organization, with interest. The FDIC will pay interest on credited amounts resulting from amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's Assessment Reporting Review of an institution's reporting methodology and will collect interest on any retroactive special assessment amounts due to the FDIC as a result of such amendments.[30]

[26] FDIC Financial Institution Letter (FIL 37–2023), Estimated Uninsured Deposits Reporting Expectations. *https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html.*

[27] *See* section 3(y)(3) of the FDI Act, 12 U.S.C. 1813(y)(3).

[28] Consistent with the FDIC's practice of conducting reviews under Section 7(b)(4) of the FDI Act to confirm the correctness of any assessment, the FDIC will review an institution's reporting methodology for estimated uninsured deposits and related items. *See* 12 U.S.C. 1817(b)(4).

[29] As proposed, the assessment base and rate would be calculated as of the date the final rule is adopted; however, under the final rule, this is calculated on November 2, 2023, shortly before the date of adoption, for operational and administrative reasons.

[30] Interest payments collected will be applied to any remaining amount of the special assessment

Continued

F. Initial Collection Period for the Special Assessment

Under the proposal, the special assessment would be collected beginning with the first quarterly assessment period of 2024 (*i.e.,* January 1 through March 31, 2024), with an invoice payment date of June 28, 2024. In order to mitigate the risk of overcollecting as the loss estimates for the failed banks are periodically adjusted, to preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessment would be collected over eight quarters.

1. Comments Received on the Initial Collection Period

The FDIC received three comments on the length of the initial collection period, with one commenter requesting a longer collection period to help with cash flow, one commenter requesting a shorter collection period given the ability of the banking industry to repay the DIF for the special assessment as quickly as possible, and one commenter suggesting that banks should have the option to fully fund obligations prior to the end of the proposed collection period.

The FDIC is required by statute to place the excess funds collected through the special assessment in the DIF.[31] By spreading out the collection period over eight quarters, a length of time that would enable the FDIC to develop a more accurate estimate of loss, and allowing for early cessation after the FDIC has collected enough to recover actual or estimated losses, the FDIC mitigates the risk of overcollecting. Reducing the length of the collection period could also adversely impact liquidity. Therefore, the FDIC is adopting the initial collection period of eight quarters as proposed, with a modification to allow corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period, following adoption of the final rule.

2. Adjustments to the Loss Estimate, Amendments to the Reported Amount of Estimated Uninsured Deposits and the Initial Collection Period for the Special Assessment

The estimated loss attributable to the protection of uninsured depositors pursuant to the systemic risk determination is currently estimated to total $16.3 billion. However, loss estimates for failed banks are periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred. As proposed, under the final rule, the FDIC will review and consider any revisions to the loss estimate each quarter of the collection period. Given the planned review of the reporting methodology for estimated uninsured deposits, in calculating the special assessment, the final rule will additionally apply any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

If, prior to the end of the eight-quarter collection period, the FDIC expects the loss to be lower than the amount it expects to collect from the special assessment, due to revisions to the loss estimate or due to amendments applied to estimated uninsured deposits, the FDIC will cease collection of the special assessment before the end of the initial eight-quarter collection period, in the quarter after it has collected enough to recover actual or estimated losses.[32] The FDIC will provide notice of any cessation of collections at least 30 days before the next payment is due.

G. Extended Special Assessment Collection Period

Under the proposal, if, at the end of the eight-quarter collection period, the estimated or actual loss exceeds the amount collected, the FDIC would extend the collection period over one or more quarters as needed in order to collect the difference between the amount collected and the estimated or actual loss at the end of the eight-quarter collection period, (the shortfall amount), after providing notice of at least 30 days before the first payment of any extended special assessment is due.

The FDIC did not receive any comments on the extended special assessment collection period, and is finalizing as proposed, while, in calculating the special assessment, applying any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

In the event that an extended collection period is needed, the FDIC will collect the shortfall amount on a quarterly basis. The assessment rate for any extended special assessment will equal the shortfall amount divided by the total amount of uninsured deposits less the $5 billion deduction for each banking organization subject to the special assessment, adjusted for failures or amendments to correct the reporting of estimated uninsured deposits resulting from the FDIC's Assessment Reporting Review of an institution's reporting methodology that occurred before or during the initial eight-quarter collection period. In the interest of consistency and predictability, the quarterly rate will not exceed the 3.36 basis point quarterly special assessment rate applied during the initial eight-quarter collection period, and such extended special assessment will be collected for the minimum number of quarters needed to recover the shortfall amount at such quarterly rate.

The assessment base for such extended special assessment will be as described above, based on estimated uninsured deposits reported as of November 2, 2023, for the December 31, 2022, reporting period, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology, with a $5 billion deduction for each banking organization.

H. One-Time Final Shortfall Special Assessment

The exact amount of losses will be determined when the FDIC terminates the receiverships. Receiverships are terminated once the FDIC has completed the disposition of the receivership's assets and has resolved all obligations, claims, and other impediments. The termination of the receiverships to which this special assessment applies may occur years after the initial eight-quarter collection period and any extended collection period.

In the likely event that a final loss amount at the termination of the receiverships is not determined until after the initial collection period and any extended collection period, and if losses at the termination of the receiverships exceed the amount collected through such special assessment, the FDIC proposed to impose a one-time final shortfall special assessment to collect the final shortfall amount.

Comments Received on the One-Time Final Shortfall Special Assessment

The FDIC received four comments on the one-time final shortfall special assessment. One supported the proposed calculation. One commenter recommended that if the amount collected exceeds the final loss estimate,

while the amount of interest paid by the FDIC will be added to the amount required to recover estimated losses.

[31] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[32] Amendments to the reporting of estimated uninsured deposits may result in a higher amount collected, but the increase may not be of a magnitude large enough to cease collection early.

that the excess collected should be credited against future assessments. One commenter requested that the assessment base methodology be adjusted to incorporate a risk-based component. One commenter said that the one-time final shortfall special assessment should be calculated at the end of a recommended one-year payment period.

The FDIC would only collect a one-time final shortfall special assessment if the final loss amount at the termination of the receiverships is not determined until after the initial collection period and any extended collection period, and if losses at the termination of the receiverships exceed the amount collected through such special assessment.

For the reasons described above, the FDIC is adopting the one-time final shortfall special assessment as proposed, while, in calculating the special assessment, applying any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, FDIC's review of an institution's reporting methodology.

The assessment base for such one-time final shortfall special assessment will be as described above, based on estimated uninsured deposits reported as of November 2, 2023, for the December 31, 2022, reporting period, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology, with a $5 billion deduction for each banking organization.

The FDIC will determine the assessment rate for the one-time final shortfall special assessment based on the amount needed to recover the final shortfall amount and the total amount of estimated uninsured deposits reported for the quarter that ended December 31, 2022, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology up to the determination of the shortfall amount, after applying the $5 billion deduction.

The entire one-time final shortfall special assessment will be collected in one quarter so that there are no missed amounts due to amendments or failures and to streamline the operational impact on banking organizations. The FDIC will provide banking organizations notice of at least 45 days before payment of any one-time final shortfall special assessment is due and will consider the statutory factors, including economic conditions and the effects on the industry, in deciding on the timing of such payment.

The FDIC will notify each IDI subject to a one-time final shortfall special assessment of the final shortfall special assessment rate and its share of the final shortfall assessment no later than 15 days before payment is due. The notice will be included in the IDI's invoice for its regular quarterly deposit insurance assessment.

I. Collection of Special Assessment and Any Shortfall Special Assessment

The special assessment and any shortfall special assessment will be collected at the same time and in the same manner as an IDI's regular quarterly deposit insurance assessment. Invoices for an IDI's regular quarterly deposit insurance assessment will disclose the amount of any special assessment or shortfall special assessment due.

Comments Received on Communication of Loss Estimates

Two commenters requested that the FDIC communicate any revisions to the loss estimate and updates on the collection of the special assessment. To increase transparency and in response to comments on the proposal, the FDIC is clarifying that it plans to communicate any changes to the loss estimate, as applicable, and to provide updates on the collection of the special assessment to banking organizations subject to the special assessment. Such updates will be communicated primarily through quarterly assessment invoices issued to institutions subject to the special assessment. The FDIC also publishes estimated losses and other data on bank failures and assistance on its publicly available website.[33]

J. Payment Mechanism for the Special Assessment and Any Shortfall Special Assessment

Each IDI is required to take any actions necessary to allow the FDIC to debit its special assessment and any shortfall special assessment from the bank's designated deposit account used for payment of its regular assessment. Before the dates that payments are due, each IDI must ensure that sufficient U.S. dollar funds to pay its obligations are available in the designated account for direct debit by the FDIC. Failure to take any such action or to fund the account would constitute nonpayment of the special assessment. Penalties for nonpayment will be as provided for nonpayment of an IDI's regular assessment.[34]

K. Mergers, Consolidations, and Terminations of Deposit Insurance

Under the proposed rule, if an IDI were to acquire—through merger or consolidation—another IDI following the adoption of this final rule or during any special assessment collection period, the acquiring IDI would be required to pay the acquired IDI's special assessment, if any, including any unpaid special assessment, in addition to its own special assessment, from the quarter of the acquisition through the remainder of all special assessment collection periods. Under the proposal, in the event that the FDIC extends the collection period or imposes a one-time final shortfall assessment, each banking organization's assessment base would be adjusted for mergers or failures that occurred during the eight-quarter collection period.

Under the proposed rule, when the insured status of an IDI is terminated and the deposit liabilities of the IDI are not assumed by another IDI, the IDI whose insured status is terminating must, among other things, continue to pay assessments, including the special assessment, for the assessment periods that its deposits are insured, but not thereafter.[35]

When an IDI voluntarily terminates its deposit insurance under the FDI Act, under the proposal the IDI whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured.[36]

Comments Received on Mergers, Consolidations, and Terminations of Deposit Insurance

One commenter expressed concern that use of the December 31, 2022, reporting date ignores recent acquisition activity while another commenter requested clarification that the estimates in the proposed rule exclude the uninsured deposits that New York Community Bank assumed following its acquisition of Signature Bank in March 2023.[37] One commenter requested clarification of the point at which obligation to pay the special assessment would end if a bank were to voluntarily terminate its insured status during the collection period, noting that this is

[33] *See* FDIC BankFind Suite: Bank Failures & Assistance Data, available at: *https://banks.data.fdic.gov/explore/failures. See also* FDIC Failed Bank List, available at: *https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/.*

[34] *See* 12 CFR 327.3(c).

[35] *See* 12 CFR 327.6(c).

[36] *See* 12 CFR 327.6(c).

[37] FDIC PR–21–2023. ''Subsidiary of New York Community Bancorp, Inc. to Assume Deposits of Signature Bridge Bank, N.A., From the FDIC.'' March 19, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23021.html.*

relevant to when the special assessment is reflected under International Financial Reporting Standards (IFRS) accounting principles.

The FDIC is clarifying that the uninsured deposits of First Republic Bank, Silicon Valley Bank, and Signature Bank, which failed prior to the adoption of the proposed rule, were excluded from the proposed calculation of the assessment rate and base for the special assessment, and the estimated expected effects in the proposed rule and in this final rule, and is providing clarification that such exclusion will be adopted in the final rule. This exclusion was intended to prevent disincentivizing any potential future acquisition activity following the adoption of the proposed rule, particularly given the uncertainty in the banking sector at the time the proposal was adopted.

The FDIC is adopting as final the proposed provisions related to mergers, acquisitions, and terminations of deposit insurance, with two adjustments. First, in the event that the FDIC extends the collection period or imposes a one-time final shortfall assessment, each banking organization's assessment base will not be adjusted for mergers or failures that occurred after the adoption of this final rule or during the eight-quarter collection period. In the FDIC's view, each banking organization's assessment base reflects its relative benefit from the assistance provided under the systemic risk determination. This treatment would ensure that an acquiring bank's special assessment, and any special assessment assumed for an acquired bank, continues to reflect each banking organization's relative benefit from the assistance provided under the systemic risk determination, and would have the result that a banking organization subject to the special assessment that acquires another banking organization also subject to the special assessment would derive benefit from the $5 billion deduction for both special assessment payments. The FDIC is also clarifying that the special assessment base of the acquiring bank in a merger or consolidation that occurred prior to the March 12, 2023, determination of systemic risk would be adjusted to include the uninsured deposits of the acquired bank and would derive benefit of a single $5 billion deduction. Calculating the assessment base in this manner best reflects the structure of the banking organization at the time the determination of systemic risk was made, and reflects the organization's relative benefit from the assistance provided.

Second, in order to avoid incentivizing banks to voluntarily terminate their insured status to avoid paying the special assessment under the final rule, the FDIC will require any bank that voluntarily terminates its insured status after the adoption of this final rule or during any special assessment collection period to pay the entire remaining amount of its special assessment at the same time its obligation to pay regular deposit insurance assessments would end.[38]

L. Accounting Treatment

Each institution should account for the special assessment in accordance with U.S. generally accepted accounting principles (GAAP). In accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 450, *Contingencies* (FASB ASC Topic 450), an estimated loss from a loss contingency shall be accrued by a charge to income if information indicates that it is probable that a liability has been incurred and the amount of loss is reasonably estimable.[39] Therefore, an institution will recognize in the Call Report and other financial statements the accrual of a liability and estimated loss (*i.e.,* expense) from a loss contingency for the special assessment when the institution determines that the conditions for accrual under GAAP have been met. In addition, the General Instructions to the Call Report provide guidance on ASC Topic 855, Subsequent Events, which may be applicable.[40]

Similarly, each institution should account for any shortfall special assessment in accordance with FASB ASC Topic 450 when the conditions for accrual under GAAP have been met.

Comments Received on Accounting Treatment

The FDIC received two comments that supported restructuring the special assessment as a prepaid expense that could be amortized over a multi-year period.

Structuring the special assessment as a prepaid expense would reduce the one-time effect on income but would also reduce liquidity by the full amount of the special assessment at payment. In the FDIC's view, the proposed structure of the special assessment best promotes maintenance of liquidity, which will allow institutions to absorb any potential unexpected setbacks while continuing to meet the credit needs of the U.S. economy.

For these reasons, the FDIC is declining to restructure the special assessment as a prepaid expense.

M. Request for Revisions

An IDI may submit a written request for revision of the computation of any special assessment or shortfall special assessment pursuant to existing regulation 12 CFR 327.3(f).[41]

III. Analysis and Expected Effects

A. Analysis of the Statutory Factors

Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination. As detailed in the sections that follow, and as required by the FDI Act, the FDIC has considered the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, effects on the industry, economic conditions, and any such other factors as the FDIC deems appropriate and relevant to the action taken or the assistance provided.[42]

1. The Types of Entities That Benefit

In implementing special assessments under section 13(c)(4)(G) of the FDI Act, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided pursuant to determination of systemic risk.[43]

With the rapid collapse of Silicon Valley Bank and Signature Bank in the space of 48 hours, concerns arose that risk could spread more widely to other institutions and that the financial system as a whole could be placed at risk. Shortly after Silicon Valley Bank was closed on March 10, 2023, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The extent to which IDIs rely on uninsured deposits for funding varies significantly. Uninsured deposits were used to fund nearly three-quarters of the assets at Silicon Valley Bank and Signature Bank. On March 12, 2023, the Board and the Board of Governors voted unanimously to recommend, and the

[38] *See* 12 CFR 327.6(c).

[39] FASB ASC paragraph 450–20–25–2.

[40] *See* General Instructions to the Call Report, available at: *https://www.fdic.gov/resources/bankers/call-reports/crinst-031-041/2022/2022-12-generalinstructions.pdf.*

[41] Existing regulation 12 CFR 327.4(c) allows an IDI to submit a request for review of the IDI's risk assignment. Because the amount of an IDI's special assessment or shortfall special assessment is not determined based on the IDI's risk assignment, the request for review provision under 12 CFR 327.4(c) would not be applicable to an IDI's special assessment or shortfall special assessment.

[42] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[43] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

Treasury Secretary, in consultation with the President, determined that the FDIC could use emergency systemic risk authorities under the FDI Act to complete its resolution of both Silicon Valley Bank and Signature Bank in a manner that fully protects depositors.[44] The full protection of depositors, rather than imposing losses on uninsured depositors, was intended to strengthen public confidence in the nation's banking system.

In the weeks that followed the determination of systemic risk, efforts to stabilize the banking system and stem potential contagion from the failures of Silicon Valley Bank and Signature Bank ensured that depositors would continue to have access to their savings, that small businesses and other employers could continue to make payrolls, and that other banks could continue to extend credit to borrowers and serve as a source of support. In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Indeed, shortly after Silicon Valley Bank was closed, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The failure of Silicon Valley Bank and the impending failure of Signature Bank raised concerns that, absent immediate assistance for uninsured depositors, there could be negative knock-on consequences for similarly situated institutions, depositors, and the financial system more broadly.

Following the announcement of the systemic risk determination, the FDIC observed a significant slowdown in uninsured deposits leaving certain institutions, evidence that the systemic risk determination helped stem the outflow of these deposits while providing stability to the banking industry.

Between December 31, 2022, and March 31, 2023, banks in all asset size groups experienced quarterly declines in uninsured deposit balances, but these declines were particularly severe and widespread among banks between $50 billion and $250 billion in total assets. Between December 31, 2022, and March 31, 2023, the eight U.S. GSIBs reported a weighted average decline in uninsured deposits of 2.1 percent, but changes in uninsured deposit balances over this time period varied widely. Two of the eight GSIBs experienced growth in uninsured deposits of 2.6 percent and 2.0 percent over this period while the other six GSIBs experienced declines, some significant, ranging between less than two percent to nearly 17 percent.

Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. Under the final rule, the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment.

2. Effects on the Industry

In calculating the assessment base for the special assessment, the FDIC will deduct $5 billion from each IDI or banking organization's aggregate estimated uninsured deposits reported for the quarter that ended December 31, 2022. As a result, any institution that did not report any uninsured deposits as of December 31, 2022, will not be subject to the special assessment. Additionally, most small IDIs and IDIs that are part of a small banking organization will not pay anything towards the special assessment. Some small and mid-size IDIs will be subject to the special assessment if they are subsidiaries of a banking organization with more than $5 billion in uninsured deposits and such IDIs report positive amounts of uninsured deposits after application of the deduction, or if they directly hold more than $5 billion in estimated uninsured deposits as of December 31, 2022, which for smaller institutions would constitute heavy reliance on uninsured deposits.

Based on data reported for the quarter ended December 31, 2022, and as captured in Table 4 above, the FDIC estimates that 114 banking organizations will be subject to the special assessment, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion will pay a special assessment, based on data reported as of December 31, 2022.[45] [46] It is anticipated that the same banking organizations subject to the special assessment would also be subject to any extended special assessment or one-time final shortfall special assessment, absent the effects of any amendments to estimated uninsured deposits, mergers, consolidations, failures, or other terminations of deposit insurance that occur through the determination of such extended special assessment or one-time final shortfall special assessment.

3. Capital and Earnings Analysis

The FDIC has analyzed the effect of the special assessment on the capital and earnings of banking organizations, including IDIs that are not subsidiaries of a holding company. This analysis incorporates data on estimated uninsured deposits reported by banking organizations for the December 31, 2022, reporting period, including amendments filed through November 2, 2023, and assumes that pre-tax income for the quarter in which a banking organization will recognize the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency for the special assessment, will equal the average of their pre-tax income from July 1, 2022, through June 30, 2023.[47]

To avoid the possibility of underestimating effects on bank earnings and capital, the analysis also assumes that the effects of the special assessment are not transferred to customers in the form of changes in borrowing rates, deposit rates, or service fees. The analysis considers the effective pre-tax cost of the special assessment in calculating the effect on capital.[48] [49]

A banking organization's earnings retention and dividend policies influence the extent to which the special assessment affects equity capital

[44] 12 U.S.C. 1823(c)(4)(G). *See also:* FDIC PR–17–2023. ''Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC.'' March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23017.html.*

[45] The number of banking organizations subject to the special assessment may change after the publication of the final rule depending on any mergers, consolidations, failures, or other terminations of deposit insurance, or amendments to reported estimates of uninsured deposits.

[46] Some IDIs that report less than $5 billion in estimated uninsured deposits will be subject to the special assessment if they are part of banking organizations with multiple IDIs that report a combined total of estimated uninsured deposits in excess of $5 billion.

[47] All income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of non-zero earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[48] The Tax Cuts and Jobs Act of 2017 placed a limitation on tax deductions for FDIC premiums for banks with total consolidated assets between $10 and $50 billion and disallowed the deduction entirely for banks with total assets of $50 billion or more. However, the definition of FDIC premiums under the Act is limited to any assessment imposed under section 7(b) of the FDI Act (12 U.S.C. 1817(b)), and therefore does not include special assessments required under section 13(c)(4)(G) of the FDI Act. *See* the Tax Cuts and Jobs Act, Public Law 115–97 (Dec. 22, 2017).

[49] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

levels. A banking organization may reduce the effect of recognizing the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency for the special assessment or shortfall special assessment, by adjusting downward the amount of dividends. This analysis instead assumes that a banking organization will maintain its dividend rate (that is, dividends as a percentage of net income) unchanged from the weighted average rate reported from July 1, 2022, through June 30, 2023. In the event that the ratio of Tier 1 capital to assets falls below four percent, however, this assumption is modified such that the banking organization retains the amount necessary to reach a four percent minimum and distributes any remaining funds according to the dividend payout rate.[50]

The FDIC estimates that it will collect the estimated loss from protecting uninsured depositors at Silicon Valley Bank and Signature Bank of approximately $16.3 billion, over the initial eight-quarter collection period. Banking organizations will recognize the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency for the special assessment when the institution determines that the conditions for accrual under GAAP have been met. This analysis assumes that the effects on capital and earnings of the entire amount of the special assessment to be collected over eight quarters would occur in one quarter only.

Given the current loss estimate and the assumptions in the analysis, the FDIC estimates that, on average, the special assessment will decrease the dollar amount of Tier 1 capital of banking organizations required to pay the special assessment by an estimated 62 basis points.[51] No banking organizations are estimated to fall below the minimum capital requirement (a four percent Tier 1 capital-to-assets ratio) as a result of the special assessment.

For the four quarters that ended June 30, 2023, the banking industry reported net income of $290.5 billion, nearly 13 percent higher than for the four quarters that ended June 30, 2022, and above the pre-pandemic average. The effect of the special assessment on a banking organization's income is measured by calculating the amount of the special assessment as a percent of pre-tax income (hereafter referred to as ''income'').

While the special assessment is allocated based on estimated uninsured deposits reported at the banking organization level, IDIs will be responsible for payment of the special assessment. The FDIC analyzed the effect of the special assessment on income reported at the IDI-level for IDIs subject to the special assessment that are not subsidiaries of a holding company or that are subsidiaries of a holding company with only one IDI subsidiary. For IDIs that are subsidiaries of a holding company with more than one IDI subsidiary, the FDIC analyzed the effect of the special assessment by aggregating the income reported by all IDIs subject to the special assessment within each banking organization since the IDIs will be responsible for payment. The FDIC analyzed the impact of the special assessment on banking organizations that were profitable based on their average quarterly income from July 1, 2022, to June 30, 2023.[52]

The effects on income of the entire amount of the special assessment to be collected over eight quarters are assumed to occur in one quarter only. Given the assumptions and the estimated loss amount, the FDIC estimates that the special assessment would result in an average one-quarter reduction in income of 20.4 percent for banking organizations subject to the special assessment.[53]

Comments Received on the Effect of the Special Assessment on Capital and Earnings

The FDIC received 13 comments, including three comments from trade associations, suggesting modifications to change the timing of, or otherwise mitigate the effect of the special assessment on capital, earnings, and regular deposit insurance assessments. Seven commenters supported an optional transition period or a similar approach to allow banking organizations to phase in the effects of the special assessment on their regulatory capital ratios over the eight-quarter collection period.

One commenter said that for purposes of calculating requirements and guidance related to levels of dividends and stock repurchases, and for examination findings related to earnings, the reduction in earnings resulting from the payment of the special assessment should be disregarded, or at least be amortized over the collection period. The same commenter also requested an adjustment to eliminate the impact of the special assessment on regular quarterly deposit insurance assessments for large banks and highly complex banks.[54]

As described above, given the loss estimate and the assumptions applied in the analysis, the FDIC estimates that, on average, the special assessment will decrease the dollar amount of Tier 1 capital of banking organizations subject to the special assessment by an estimated 62 basis points. No banking organizations are estimated to fall below the minimum capital requirement (a four percent Tier 1 capital-to-assets ratio) as a result of the special assessment. As described above, the effect of the special assessment on Tier 1 capital is minimal and is not estimated to cause any institutions to fall below the minimum capital requirement; therefore, the FDIC is not adopting a transition period to phase in the special assessment's effect on regulatory capital.

[50] The analysis uses four percent as the threshold because IDIs generally need to maintain a Tier 1 leverage ratio of 4.0 percent or greater to be considered ''adequately capitalized'' under Prompt Corrective Action Standards, in addition to the following requirements: (i) total risk-based capital ratio of 8.0 percent or greater; (ii) Tier 1 risk-based capital ratio of 6.0 percent or greater; (iii) common equity tier 1 capital ratio of 4.5 percent or greater; and (iv) does not meet the definition of ''well capitalized.'' Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be ''adequately capitalized'' if it satisfies the above criteria and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with 12 CFR 324.10. *See* 12 CFR 324.403(b)(2). Additionally, Federal Reserve Board-regulated institutions must generally maintain a Tier 1 leverage ratio of 4.0 percent or greater to meet the minimum capital requirements, in addition to the following requirements: (i) total capital ratio of 8.0 percent; (ii) Tier 1 capital ratio of 6.0; (iii) common equity tier 1 capital ratio of 4.5; and (iv) for advanced approaches Federal Reserve Board-regulated institutions, or for Category III Federal Reserve Board-regulated institutions, a supplementary leverage ratio of 3 percent. *See* 12 CFR 217.10(a)(1). For purposes of this analysis, Tier 1 capital to assets is used as the measure of capital adequacy.

[51] Estimated effects on capital are calculated based on data reported as of June 30, 2023, on the Call Report and the Consolidated Financial Statements for Holding Companies (FR Y–9C), respectively, for IDIs that are not subsidiaries of a holding company or that are part of a banking organization with only one subsidiary IDI required to pay special assessments, and for banking organizations, to the extent that an IDI is part of a holding company with more than one subsidiary IDI required to pay the special assessment.

[52] There were two banking organizations that would be required to pay the special assessment that were unprofitable based on average quarterly income from July 1, 2022, to June 30, 2023.

[53] Earnings or income are quarterly income before assessments and taxes. Quarterly income is assumed to equal average income from July 1, 2022, to June 30, 2023.

[54] For regular deposit insurance assessment purposes, a large bank is generally defined as an institution with $10 billion or more in total assets, and a highly complex bank is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company. *See* 12 CFR 327.8(f) and (g).

Table 5 shows that approximately 66 percent of profitable banking organizations subject to the proposal are projected to have a special assessment of less than 20 percent of one quarter's income, including 23 percent with a special assessment of less than 5 percent of income. Another 34 percent of profitable banking organizations subject to the proposal are projected to have a special assessment equal to or exceeding 20 percent of one quarter's income.

TABLE 5—ESTIMATED ONE-QUARTER EFFECT OF ENTIRE AMOUNT OF THE SPECIAL ASSESSMENT ON INCOME FOR PROFITABLE BANKING ORGANIZATIONS SUBJECT TO THE SPECIAL ASSESSMENT [1]

Special assessment as percent of income	Number of banking organizations	Percent of banking organizations	Assets of banking organizations [$ billions]	Percent of assets
Over 30	15	14	5,838	30
20 to 30	23	21	6,308	32
10 to 20	28	25	5,504	28
5 to 10	20	18	805	4
Less than 5	25	23	1,034	5
Total	111	100	19,489	100

[1] Income is defined as quarterly pre-tax income. Quarterly income is assumed to equal the average of income from July 1, 2022, through June 30, 2023. For purposes of this analysis, the effects on income of the entire amount of the special assessment to be collected over eight quarters are assumed to occur in one quarter only. The special assessment as a percent of income is an estimate of the one-time accrual of the full eight quarters of the special assessment as a percent of a single quarter's income. Profitable banking organizations are defined as those having positive average income for the 12 months ending June 30, 2023. Excludes two banking organizations that would be required to pay the special assessment that were unprofitable. Also excludes one foreign banking organization subject to the special assessment. Some columns do not add to total due to rounding. Special assessment estimates are based on uninsured deposits for the December 31, 2022, report date and incorporate amendments, mergers, acquisitions and failures through November 2, 2023.

In order to preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessment will be collected over eight quarters. The special assessments is applicable for the first quarterly assessment period of 2024. Given that the proposal was approved by the Board and published in the **Federal Register** in May 2023, institutions were provided time to prepare and plan for the special assessment.

4. Economic Conditions

On September 7, 2023, the FDIC released the results of the Quarterly Banking Profile, which provided a comprehensive summary of financial results for all FDIC-insured institutions for the second quarter of 2023. Overall, key banking industry metrics remained favorable in the quarter.[55]

Net income declined from the previous quarter due to accounting gains on failed bank acquisitions that occurred in the first and the second quarter. However, excluding these nonrecurring gains, net income was relatively flat from the prior quarter. Net income remained relatively high by historical measures in the second quarter, although the banking industry reported a tighter net interest margin and funding pressures driven by increasing rates paid on deposits as well as high rates paid on non-deposit liabilities. Loan expansion continued, asset quality metrics were favorable, and the banking industry remained well-capitalized.

The banking industry continues to face significant downside risks from the effects of inflation, rising market interest rates, and geopolitical uncertainty. These risks could cause credit quality deterioration and weakness in profitability, which may lead to more stringent underwriting standards, a slowdown in loan growth, higher provision expenses, and liquidity constraints. Also, commercial real estate portfolios are under pressure from higher interest rates as loans mature and require refinancing, and office properties are experiencing weak demand for space and softening property values.

Despite these challenges, the state of the U.S. banking system remains sound and institutions are well positioned to absorb a special assessment.[56]

B. Alternatives Considered

While the FDIC is required by statute to recover the loss to the DIF arising from the use of a systemic risk determination through one or more special assessments, section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination.[57] The FDIC considered several alternatives while developing this final rule, but believes, on balance, that the proposed special assessment is the most appropriate and straightforward manner in which to collect the special assessment. Accordingly, and after consideration of the statutory factors as described above, the FDIC is adopting as final the proposed special assessment, with changes to promote transparency and to apply any corrective amendments to the reporting of estimated uninsured deposits to the calculation of the special assessment. Brief descriptions of the alternatives, along with explanations of why the final rule is preferable to the alternatives, are as follows:

Alternative 1: One-Time Special Assessment

The first alternative the FDIC considered would have imposed a one-time special assessment. Under this alternative, the FDIC would impose the one-time special assessment in the quarter ending March 31, 2024, and collect payment for such special assessment on June 28, 2024, at the same time and in the same manner as an IDI's regular quarterly deposit insurance assessment. The aggregate

[55] FDIC Quarterly Banking Profile, Second Quarter 2023. *https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023jun/.*

[56] Statement of Martin J. Gruenberg, Chairman of the FDIC on ''Recent Bank Failures and the Federal Regulatory Response,'' before the United States Senate Committee on Banking, Housing, and Urban Affairs. March 28, 2023. *https://www.banking.senate.gov/imo/media/doc/Gruenberg%20Testimony%203-28-23.pdf.*

[57] 12 U.S.C. 1823(c)(4)(G)(ii)(I). In implementing special assessments, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, effects on the industry, economic conditions, and any such other factors as the FDIC deems appropriate and relevant to the action taken or the assistance provided. *See* 12 U.S.C. 1823(c)(4)(G)(ii)(III).

amount of a one-time special assessment would equal the entire initial loss estimate. Calculation of the special assessment, including the special assessment rate, would be the same as proposed, but instead of collecting the amount over eight quarters, the FDIC would collect the entire amount in one quarter.

Once actual losses are determined as of the termination of the receiverships, and if the actual losses exceeded the amount collected under the one-time special assessment, the FDIC would impose a shortfall special assessment to collect the amount of losses in excess of the amount collected. Collection of the entire shortfall special assessment would also occur in one quarter.

Conversely, if the amount collected under the one-time special assessment exceeded actual losses, the FDIC is required by statute to place the excess funds collected in the DIF.[58]

Similar to this alternative, one commenter suggested that banks should have the option to fully fund obligations prior to the end of the proposed time period. While under both the final rule and this alternative, the estimated amount of the special assessment would be recognized with the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency when the institution determines that the conditions for accrual under GAAP have been met, which impacts capital and earnings, this alternative would additionally require payment of the entire amount in the second quarter of 2024, and would impact liquidity significantly in one quarter. The FDIC rejected this alternative in order to spread the liquidity impact over multiple quarters and to mitigate the risk of overcollecting.

Alternative 2: Asset Size Applicability Threshold

A second alternative the FDIC considered would be to base applicability on an asset size threshold as an alternative to deducting the first $5 billion in estimated uninsured deposits in calculating an IDI or banking organization's assessment base for the special assessment. One commenter supported this approach.

As described previously, in implementing special assessments, the FDI Act requires the FDIC to consider the types of entities that benefit from any action taken or assistance provided pursuant to the determination of systemic risk.[59] Large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs had those occurred as a result of the bank failures. Larger banks also benefited the most from the stability provided to the banking industry under the systemic risk determination.

While both the methodology adopted under the final rule, including the $5 billion deduction from estimated uninsured deposits, and an alternative asset-size-based applicability threshold would effectively remove the smallest institutions from eligibility, the deduction of $5 billion from each banking organization's estimated uninsured deposits in calculating the special assessment helps to mitigate a ''cliff effect'' relative to applying a different threshold for applicability, such as applying an asset size threshold, thereby ensuring more equitable treatment. With an asset size threshold, an IDI just above such threshold would pay a significant amount in special assessments, while an IDI just below such threshold would pay none. The FDIC rejected this alternative for these reasons.

Alternative 3: Assessment Base Equal to All Uninsured Deposits, Without $5 Billion Deduction

A third alternative the FDIC considered would be to eliminate the $5 billion deduction from the assessment base for the special assessment, and allocate the special assessment among IDIs based on each IDI or banking organization's total estimated uninsured deposits as of December 31, 2022. This alternative would result in a special assessment imposed on every IDI that reported a non-zero amount of estimated uninsured deposits as of December 31, 2022, or nearly 100 percent of all IDIs with total assets of $1 billion or more.[60] Relative to the methodology applied in final rule, more IDIs would pay the special assessment under this alternative, and IDIs with greater amounts of uninsured deposits would generally pay a lower special assessment relative to the methodology applied in the final rule since the special assessment would be allocated across a significantly larger number of institutions. As stated previously, the majority of commenters expressed support for the proposal and for the scope of application, including the $5 billion deduction applied to the assessment base for the special assessment.

Given the FDIC's statutory requirement to consider the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk in implementing special assessments, and given the general support for the deduction of $5 billion from the assessment base for the special assessment, the FDIC rejected this alternative in favor of allocating the special assessment to larger institutions with the largest amounts of uninsured deposits as of December 31, 2022, and that experienced significant and widespread declines in uninsured deposits between December 31, 2022, and March 31, 2023, with the result that smaller institutions would not have to contribute to the special assessment. In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination.

Alternative 4: Special Assessment Based on Each Institution's Percentage of Uninsured Deposits to Total Deposits

A fourth alternative the FDIC considered would be to allocate the special assessment among IDIs based on each IDI's estimated uninsured deposits as a percentage of their total domestic deposits reported as of December 31, 2022, as a proxy for reliance on uninsured deposits at the time the determination of systemic risk was made and uninsured depositors of the failed institutions were protected. Similar to the third alternative, this would result in a special assessment imposed on every IDI that reported a non-zero amount of estimated uninsured deposits as of December 31, 2022, or nearly 100 percent of IDIs with total assets of $1 billion or more.[61] Two commenters supported an assessment base for the special assessment equal to uninsured deposits as a percentage of total deposits or to otherwise apply a

[58] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[59] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[60] IDIs with less than $1 billion in total assets as of June 30, 2021, were not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

[61] IDIs with less than $1 billion in total assets as of June 30, 2021, were not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

calculation that would result in a larger special assessment for institutions with a greater reliance on uninsured deposits for funding.

Under this alternative, IDIs with a greater reliance on uninsured deposits would generally pay the greatest amount of the special assessment; however, the special assessment would be allocated across a large number of institutions, unless a threshold is imposed. Even with a threshold based on assets or another measure, this alternative would result in institutions of vastly different asset sizes and with different dollar amounts of uninsured deposits paying a similar dollar amount of the special assessment. For example, an institution just above the asset threshold would pay the same special assessment as a much larger institution with the same reliance on uninsured deposits. It also would result in some smaller banking organizations paying potentially significant amounts of the special assessment, and the larger banks that have high amounts of uninsured deposits and benefited the most from the stability provided to the banking industry under the systemic risk determination, but that do not have high uninsured deposit concentrations, paying a smaller share of the special assessment.

In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. The FDIC rejected this alternative for these reasons and because the methodology in the final rule results in a larger special assessment for similarly sized banking organizations reporting greater concentrations of uninsured deposits.

Alternative 5: Charge IDIs for 50 Percent of Special Assessment in Year One Based on Uninsured Deposits as of December 31, 2022; Charge for the Remainder in Year Two Based on Uninsured Deposits Reported as of December 31, 2023

Under the final rule and all alternatives described above, the special assessment would initially be calculated based on an estimated amount of losses, as the exact amount of losses will not be known until the FDIC terminates the two receiverships. A fifth alternative the FDIC considered would be to collect 50 percent of the special assessment during the initial four-quarter collection period based on estimated uninsured deposits reported by all IDIs as of December 31, 2022, and collect the remaining special assessment for an additional four-quarter collection period based on an updated estimate of losses pursuant to the systemic risk determination and estimated uninsured deposits reported by all IDIs as of December 31, 2023.

Under this alternative, for the initial four-quarter collection period the special assessment would be allocated to all IDIs based on each IDI or banking organization's estimated uninsured deposits as a share of estimated uninsured deposits reported by all IDIs as of December 31, 2022, as a proxy for the amount of uninsured deposits in each institution at the time the determination of systemic risk was made and uninsured depositors of the failed institutions were protected. Such methodology would allocate the special assessment to the institutions that had the largest amounts of uninsured deposits at the time of the determination of systemic risk.

The remaining special assessment would be based on an updated estimate of losses as of December 31, 2023, and would be allocated to IDIs with total assets of $1 billion or more, based on each IDI or banking organization's estimated uninsured deposits as a share of estimated uninsured deposits reported by all IDIs as of December 31, 2023, in order to reflect amounts of uninsured deposits that did not run off following the determination of systemic risk. The FDIC rejected this alternative because in the FDIC's view, estimated uninsured deposits as of December 31, 2022, most closely approximate an institution's vulnerability to significant deposit withdrawals in the absence of the determination of systemic risk, and therefore reflect the institutions that most benefited from such determination. Additionally, three commenters supported the use of an alternative measure in the special assessment base specifically for the reason that they believe use of uninsured deposits in the assessment base discourages banks from holding uninsured deposits. This alternative may also change the timing of accrual of the contingent liability by banks. The final rule's allocation methodology based on amounts of uninsured deposits as of December 31, 2022, would result in transparent and consistent payments, and a more simplified framework for calculating the special assessment.

Alternative 6: Apply Special Assessment Rate to Regular Assessment Base, With or Without Application of a $5 Billion Deduction

A sixth alternative the FDIC considered is to apply a special assessment rate to an institution's regular quarterly deposit insurance assessment base (regular assessment base) for that quarter, with or without applying a $5 billion deduction. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[62] Under this alternative, the FDIC estimates that it would need to charge an annual assessment rate of 3.97 basis points over two years to recover estimated losses without the $5 billion deduction, or 4.84 basis points with the $5 billion deduction; however, a significantly larger number of banking organizations would be subject to the special assessment relative to the proposal. Two commenters supported use of the regular assessment base to calculate the special assessment.

Under this alternative, the IDIs with the largest assessment base would pay the greatest amount of the special assessment. IDIs for which certain assets are excluded in the calculation of the regular assessment base would pay a lower special assessment due to their smaller assessment base.

This alternative would result in smaller banking organizations, regardless of reliance on uninsured deposits for funding, paying potentially significant amounts of the special assessment. Further, IDIs engaged in trust activities, or with fiduciary and custody and safekeeping assets, and for which certain assets are excluded from their regular assessment base, would pay lower amounts of the special assessment due to these exclusions, despite holding significant amounts of uninsured deposits. The FDIC rejected this alternative for these reasons.

In the FDIC's view, the final rule reflects an appropriate balancing of the statutory requirement to apply the special assessment to the types of entities that benefited the most from the protection of uninsured depositors provided under the determination of systemic risk while ensuring equitable, transparent, and consistent treatment based on amounts of uninsured deposits at the time of the determination of systemic risk. The final rule also allows for payments to be collected over an extended period of time in order to mitigate the liquidity effects of the special assessment by requiring smaller,

[62] *See* 12 CFR 327.5.

consistent quarterly payments. On balance, in the FDIC's view, the final rule best promotes maintenance of liquidity, which will allow institutions to absorb any potential unexpected setbacks while continuing to meet the credit needs of the U.S. economy.

C. Effective Date and Application Date of the Final Rule

The FDIC is issuing this final rule with an effective date of April 1, 2024. The first collection for the special assessment will be reflected on the invoice for the first quarterly assessment period of 2024 (*i.e.,* January 1 through March 31, 2024), with a payment date of June 28, 2024, and the FDIC will continue to collect the special assessment for an anticipated total of eight quarterly assessment periods. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, and to allow for any corrective amendments to the amount of uninsured deposits reported for the December 31, 2022, reporting period applied to the calculation of the special assessment, the FDIC retains the ability to cease collection early, impose an extended special assessment collection period after the initial eight-quarter collection period to collect the difference between losses and the amounts collected, and impose a one-time final shortfall special assessment after both receiverships terminate.

IV. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[63] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[64] Certain types of rules, such as rules of particular applicability relating to rates, corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[65] Because the final rule relates directly to the rates imposed on FDIC-insured institutions, the final rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

The FDIC insures 4,654 institutions as of June 30, 2023, of which 3,373 are small entities.[66] As discussed previously, the final rule implements a special assessment on IDIs that are part of banking organizations that reported $5 billion or more in uninsured deposits for the reporting period that ended December 31, 2022. Given that no small entity has reported $5 billion or more in uninsured deposits, the FDIC does not believe the final rule will have a direct effect on any small entity.

The FDIC invited comments regarding the supporting information provided in the RFA section in the proposed rule, but did not receive comments on this topic.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[67] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The final rule does not create any new, or revise any of these existing assessment information collections pursuant to the PRA; consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review.

C. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)[68] requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[69]

The final rule does not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. The FDIC invited comments regarding the application of RCDRIA in the proposed rule, but did not receive comments on this topic. Nevertheless, the requirements of RCDRIA have been considered in setting the final effective date.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[70] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC invited comments regarding the use of plain language in the proposed rule but did not receive any comments on this topic.

E. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[71] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[72]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of

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[63] 5 U.S.C. 601 *et seq.*

[64] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

[65] 5 U.S.C. 601(2).

[66] June 30, 2023, Call Report data, the most current Call Reports for which the FDIC can determine which insured depository institutions are ''small'' for purposes of RFA.

[67] 44 U.S.C. 3501–3521.

[68] 12 U.S.C. 4802(a).

[69] 12 U.S.C. 4802(b).

[70] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[71] 5 U.S.C. 801 *et seq.*

[72] 5 U.S.C. 801(a)(3).

Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[73]

The OMB has determined that the final rule is a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821, 1823.

■ 2. Add § 327.13 to read as follows:

§ 327.13 Special Assessment Pursuant to March 12, 2023, Systemic Risk Determination.

(a) *Special Assessment.* A special assessment shall be imposed on each insured depository institution to recover losses to the Deposit Insurance Fund, as described in paragraph (b) of this section, resulting from the March 12, 2023, systemic risk determination pursuant to 12 U.S.C. 1823(c)(4)(G). The special assessment shall be collected from each insured depository institution on a quarterly basis as described in this section during the initial special assessment period as defined in paragraph (i) of this section and, if necessary, the extended special assessment period as defined in paragraph (j) of this section, and if further necessary, on a one-time basis as described in paragraph (m) of this section.

(b) *Losses to the Deposit Insurance Fund.* As used in this section, ''losses to the Deposit Insurance Fund'' refers to losses incurred by the Deposit Insurance Fund resulting from actions taken by the FDIC under the March 12, 2023, systemic risk determination, as may be revised from time to time.

(c) *Calculation of quarterly special assessment amount.* An insured depository institution's special assessment for each quarter during the initial special assessment period and extended special assessment period shall be calculated by multiplying the special assessment rate defined in paragraph (i)(2) or (j)(3) of this section, as appropriate, by the institution's special assessment base as defined in paragraph (i)(3) or (j)(4) of this section, as appropriate.

(d) *Invoicing of special assessment.* For each assessment period in which the special assessment is imposed, the FDIC shall advise each insured depository institution of the amount and calculation of any special assessment payment due in a form that notifies the institution of the special assessment base and special assessment rate exclusive of any other assessments imposed under this part. The FDIC shall also advise each insured depository institution subject to the special assessment of any revisions, if any, to losses to the Deposit Insurance Fund as defined in paragraph (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice under § 327.2 for the assessment period in which the special assessment was imposed.

(e) *Payment of quarterly special assessment amount.* Each insured depository institution shall pay to the Corporation any special assessment imposed under this section in compliance with and subject to the provisions of §§ 327.3, 327.6, and 327.7. The date for any special assessment payment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the special assessment was imposed.

(f) *Uninsured deposits.* For purposes of this section, the term ''uninsured deposits'' means an institution's estimated uninsured deposits as reported in Memoranda Item 2 on Schedule RC–O, Other Data For Deposit Insurance Assessments in the Consolidated Reports of Condition and Income (Call Report) or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) for the quarter ended December 31, 2022, reported as of the later of:

(1) November 2, 2023, adjusted for mergers prior to March 12, 2023; or

(2) The date of the institution's most recent amendment to its Call Report or FFIEC 002 for the quarter ended December 31, 2022, if such amendment arises from, or is confirmed through, the FDIC's Assessment Reporting Review. Institutions with less than $1 billion in total assets as of June 30, 2021, were not required to report such items; therefore, for purposes of calculating the special assessment or a shortfall special assessment under this section, the amount of uninsured deposits for such institutions as of December 31, 2022, is zero.

(g) *$5 billion deduction from the special assessment base—institution's portion.* For purposes of this section, an institution's portion of the $5 billion deduction shall equal the ratio of the institution's uninsured deposits to the sum of the institution's uninsured deposits and the uninsured deposits of all of the institution's affiliated insured depository institutions, multiplied by $5 billion.

(h) *Affiliates.* For the purposes of this section, an affiliated insured depository institution is an insured depository institution that meets the definition of ''affiliate'' in section 3 of the FDI Act, 12 U.S.C. 1813(w)(6).

(i) *Special assessment during initial special assessment period*—(1) *Initial special assessment period.* The initial special assessment period shall begin with the first quarterly assessment period of 2024 and end the earlier of the last quarterly assessment period of 2025 or the first quarterly assessment period that the aggregate amount of special assessments collected under this section meets or exceeds the losses to the Deposit Insurance Fund, where amounts collected and losses are compared on a quarterly basis.

(2) *Special assessment rate during initial special assessment period.* The special assessment rate during the initial special assessment period is 3.36 basis points on a quarterly basis.

(3) *Special assessment base during initial special assessment period*—(i) The special assessment base for an insured depository institution during the initial special assessment period that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's assessment base cannot be negative.

(ii) The special assessment base for an insured depository institution during the initial special assessment period that has one or more affiliated insured depository institutions shall equal:

[73] 5 U.S.C. 804(2).

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction; provided, however, that an institution's special assessment base cannot be negative.

(j) *Special assessment during extended special assessment period*—(1) *Shortfall amount.* The shortfall amount is the amount of losses to the Deposit Insurance Fund, as reviewed and revised as of the last quarterly assessment period of 2025, that exceed the aggregate amount of special assessments collected during the initial special assessment period.

(2) *Extended special assessment period.* If there is a shortfall amount after the last quarterly assessment period of 2025, the special assessment period will be extended, with at least 30 day notice to insured depository institutions, to collect the shortfall amount. The length of the extended special assessment period shall be the minimum number of quarters required to recover the shortfall amount at a rate under paragraph (j)(3) of this section that is at or below 3.36 basis points per quarter.

(3) *Assessment rate during extended special assessment period.* The quarterly assessment rate during the extended special assessment period will be the shortfall amount, divided by the total amount of uninsured deposits, adjusted for mergers, consolidation, and termination of insurance as of the last quarterly assessment period of 2025, minus the $5 billion deduction for each insured depository institution or each institution's portion of the $5 billion deduction, divided by the minimum number of quarters that results in the quarterly rate being no greater than 3.36 basis points.

(4) *Assessment base during the extended special assessment period.* (i) The special assessment base for an insured depository institution during the extended special assessment period that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's special assessment base cannot be negative.

(ii) The special assessment base for an insured depository institution during the extended special assessment period that has one or more affiliated insured depository institutions shall equal:

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction, adjusted for termination of insurance as of the last assessment period of 2025; provided, however, that an institution's special assessment base cannot be negative.

(k) *Effect of mergers, consolidations, and other terminations of insurance on the special assessment*—(1) *Final quarterly certified invoice for acquired institution.* The surviving or resulting insured depository institution in a merger or consolidation shall be liable for any unpaid special assessment or one-time final shortfall special assessment outstanding at the time of the merger or consolidation on the part of the institution that is not the resulting or surviving institution consistent with § 327.6.

(2) *Special assessment for quarter in which the merger or consolidation occurs and subsequent quarters.* If an insured depository institution is the surviving or resulting institution in a merger or consolidation or acquires all or substantially all of the assets, or assumes all or substantially all of the deposit liabilities, of an insured depository institution, then the surviving or resulting insured depository institution or the insured depository institution that acquires such assets or assumes such deposit liabilities, shall be liable for the acquired institutions' special assessment from the quarter of the acquisition through the remainder of the initial and extended special assessment period, including any one-time final shortfall special assessment.

(3) *Other termination.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution, the special assessment and any shortfall special assessment shall be paid consistent with § 327.6(c). When an insured depository institution voluntarily terminates its deposit insurance, the institution shall be liable for any unpaid special assessment or one-time final shortfall special assessment outstanding at the time of the termination and all future special assessments, if any, the institution would have been invoiced through the remainder of the initial or extended special assessment period, as applicable, including any one-time final shortfall special assessment for which the institution has been given notice before termination. Any special assessment or one-time final shortfall special assessment liabilities will be included, in full, on the final quarterly assessment invoice following voluntary termination.

(l) *Corrective reporting amendments*—(1) *Recalculation of quarterly special assessment amount.* Corrective amendments to an institution's uninsured deposits that arise from, or are confirmed through, the FDIC's Assessment Reporting Review will apply retroactively beginning the first quarterly collection period of the initial special assessment period. An institution's special assessment base and portion of the $5 billion deduction, along with the portion of the $5 billion deduction allocated to the institution's affiliated insured depository institutions, will be recalculated for prior collection quarters. Any overpayment or underpayment in prior collection quarters as a result of the recalculation will be invoiced as described in paragraph (l)(2) of this section.

(2) *Invoicing overpayment and underpayment.* Any underpayment of the special assessment by an institution as the result of corrective amendments to uninsured deposits will be included, in full and with interest, on the invoice for the quarter following the date a corrective amendment is filed. If a corrective amendment results in an overpayment of the special assessment, the institution will be credited the overpayment amount, with interest, and such amount will be applied to the institution's subsequent special assessment invoices beginning in the quarter following the date of the amendment. If any excess credit amount remains after the end of the initial and any extended special assessment period(s), the excess credit amount shall be refunded to the institution. Payment and collection of interest on amounts resulting from overpayment and underpayment of the special assessment shall be consistent with § 327.7.

(m) *One-time final shortfall special assessment.* If the aggregate amount of the special assessment collected during the initial and any extended special assessment period(s) do not meet or exceed the losses to the Deposit Insurance Fund, as calculated after the receiverships resulting from the March 12, 2023, systemic risk determination are terminated, insured depository institutions shall pay a one-time final shortfall special assessment in accordance with this paragraph.

(1) *Notification of one-time final shortfall special assessment.* The FDIC shall notify each insured depository institution of the amount of such institution's one-time final shortfall special assessment no later than 45 days before such shortfall assessment is due.

(2) *Aggregate one-time final shortfall special assessment amount.* The aggregate amount of the one-time final shortfall special assessment imposed across all insured depository institutions shall equal the losses to the

Deposit Insurance Fund, as of termination of the receiverships to which the March 12, 2023, systemic risk determination applied, minus the aggregate amount of the special assessment collected under this section through initial and extended special assessment periods, including the net amount of interest paid or received as a result of overpayments and underpayments.

(3) *One-time final shortfall special assessment rate.* The final shortfall special assessment rate shall be the aggregate final shortfall special assessment amount divided by the total amount of uninsured deposits, as described in paragraph (f) of this section, adjusted for mergers, consolidation, and termination of insurance as of the assessment period preceding the final shortfall special assessment period, minus the $5 billion deduction for each insured depository institution or each institution's portion of the $5 billion deduction.

(4) *One-time final shortfall special assessment base*—(i) The one-time final shortfall special assessment base for an insured depository institution that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's one-time final shortfall special assessment base cannot be negative.

(ii) The one-time final shortfall special assessment base for an insured depository institution that has one or more affiliated insured depository institutions shall equal:

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction, adjusted for termination of insurance as of the assessment period preceding the final shortfall assessment period; provided, however, that an institution's one-time final shortfall special assessment base cannot be negative.

(5) *Calculation of one-time final shortfall special assessment.* An insured depository institution's final shortfall special assessment shall be calculated by multiplying the final shortfall special assessment rate by the institution's one-time final shortfall special assessment base.

(6) *One-time final special assessment.* The one-time final shortfall special assessment shall be collected on a one-time quarterly basis after losses to the Deposit Insurance Fund are determined after termination of the receiverships to which the March 12, 2023, systemic risk determination applied.

(7) *Payment, invoicing, and mergers.* Paragraphs (d), (e), and (k) of this section are applicable to the one-time shortfall special assessment.

(n) *Request for revisions.* An insured depository institution may submit a written request for revision of the computation of any special assessment or shortfall special assessment pursuant to this part consistent with § 327.3(f).

(o) *Special assessment collection in excess of losses.* Any special assessment collected under this section that exceeds the losses to the Deposit Insurance Fund, as of termination of the receiverships to which the March 12, 2023, systemic risk determination applied, shall be placed in the Deposit Insurance Fund.

(p) *Rule of construction.* Nothing in this section shall prevent the FDIC from imposing additional special assessments as required to recover current or future losses to the Deposit Insurance Fund resulting from any systemic risk determination under 12 U.S.C. 1823(c)(4)(G).

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 16, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–25813 Filed 11–28–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2152; Project Identifier MCAI–2023–00798–T; Amendment 39–22607; AD 2023–23–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a design review of the avionic architecture of the pitch trim indication and alerting system that revealed software errors could generate misleading pitch trim indication to the crew, leading to incorrect horizontal stabilizer positioning at takeoff. This AD requires revising the Emergency Procedures and Normal Procedures of the existing airplane flight manual (AFM) to ensure the horizontal stabilizer is correctly configured prior to takeoff. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 14, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2023.

The FAA must receive comments on this AD by January 16, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2152; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–2152.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2152; Project Identifier MCAI–2023–00798–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–48, dated June 30, 2023 (Transport Canada AD CF–2023–48), to correct an unsafe condition on certain Bombardier, Inc., Model BD–100–1A10 airplanes. Transport Canada AD CF–2023–48 states that a Bombardier design review of the avionic architecture of the pitch trim indication and alerting system has revealed that software errors in the input/output concentrator, data concentrator unit, and/or adaptive flight display could generate misleading pitch trim indication to the crew, leading to incorrect horizontal stabilizer positioning at takeoff. Incorrect horizontal stabilizer positioning at takeoff could result in an extreme pitch oscillation and subsequent loss of control of the airplane and serious injury to passengers.

After Transport Canada AD CF–2023–48 was issued, Transport Canada notified the FAA that the required actions in Transport Canada AD CF–2023–48 did not adequately address the unsafe condition, and that they planned to revise their AD accordingly. Subsequently, Transport Canada issued Transport Canada AD CF–2023–48R1, dated September 29, 2023 (Transport Canada AD CF–2023–48R1) (referred to after this as the MCAI) as an interim solution while it further investigates the unsafe condition. The MCAI requires mandating new AFM procedures to ensure the flightcrew checks that the horizontal stabilizer is correctly configured to prevent misleading pitch trim indications, which could result in extreme pitch oscillation.

The FAA is issuing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2152.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier temporary revisions:

- Bombardier Challenger 300 Temporary Revision TR–94–1, to Airplane Flight Manual (AFM) CSP 100–1, dated February 6, 2023;
- Bombardier Challenger 300 Temporary Revision TR–94–1, to AFM CSP 100–1 (Metric), dated February 6, 2023; and
- Bombardier Challenger 350 Temporary Revision TR–25–1, to AFM CH 350, dated February 6, 2023.

This service information describes procedures for revising the Emergency Procedures and Normal Procedures of the existing AFM to ensure the horizontal stabilizer is correctly configured prior to takeoff. These documents are distinct since they apply to different airplane configurations.

The FAA also reviewed the following checklists:

- ''Takeoff Configuration Warnings,'' of Chapter 3, ''Emergency Procedures,'' of the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023; and
- ''Before Starting Engines,'' of Chapter 4, ''Normal Procedures,'' of the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

These checklists include the same information specified in Bombardier Challenger 350 Temporary Revision TR–25–1, to AFM CH 350, dated February 6, 2023, but with minor changes to text. (For obtaining the checklists for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

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

FAA's Determination

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

AD Requirements

This AD requires revising the Emergency Procedures and Normal Procedures of the existing AFM to ensure the horizontal stabilizer is correctly configured prior to takeoff.

Compliance With AFM Revisions

Transport Canada AD CF–2023–48R1 requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this AD does not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require that operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the

operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Interim Action

The FAA considers this AD to be an interim action. Transport Canada and Bombardier are still investigating the unsafe condition to determine if additional actions are necessary. If additional actions are determined to be necessary, the FAA may issue additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because software errors in the avionic architecture of the pitch trim indication could generate misleading pitch trim indication to the crew, leading to incorrect horizontal stabilizer positioning at takeoff, which could result in an extreme pitch oscillation and subsequent loss of control of the airplane and serious injury to passengers. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 740 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$85	$85	$62,900

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–23–05 Bombardier, Inc.: Amendment 39–22607; Docket No. FAA–2023–2152; Project Identifier MCAI–2023–00798–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20936 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 31, Indicating/Recording System; 27, Flight Controls.

(e) Reason

This AD was prompted by a design review of the avionic architecture of the pitch trim indication and alerting system that revealed software errors could generate misleading pitch trim indication to the crew, leading to incorrect horizontal stabilizer positioning at takeoff. The FAA is issuing this AD to ensure the horizontal stabilizer is correctly

configured prior to takeoff. The unsafe condition, if not addressed, could result in an extreme pitch oscillation and subsequent loss of control of the airplane and serious injury to passengers.

(f) Compliance

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

(g) Revision of Existing Airplane Flight Manual (AFM)

Within 60 days after the effective date of this AD, revise the Emergency Procedures in Section 03–35, and the Normal Procedures in Section 04–02, of the existing AFM to include the information specified in the service information identified in paragraph (g)(1) or (2), as applicable.

(1) Bombardier Challenger 300 Temporary Revision TR–94–1, to Airplane Flight Manual (AFM) CSP 100–1, dated February 6, 2023; or Bombardier Challenger 300 Temporary Revision TR–94–1, to AFM CSP 100–1 (Metric), dated February 6, 2023.

(2) Bombardier Challenger 350 Temporary Revision TR–25–1, to AFM CH 350, dated February 6, 2023; or page 03–35–1, in checklist ''Takeoff Configuration Warnings,'' of Chapter 3, ''Emergency Procedures,'' and page 04–02–10, in checklist ''Before Starting Engines,'' of Chapter 4, ''Normal Procedures,'' of the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 1 to paragraph (g)(2): For obtaining the checklists for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(h) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-AVS-NYACO-COS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(i) Additional Information

(1) Refer to Transport Canada AD CF–2023–48R1, dated September 29, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2152.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bombardier Challenger 300 Temporary Revision TR–94–1, to Airplane Flight Manual (AFM) CSP 100–1, dated February 6, 2023.

(ii) Bombardier Challenger 300 Temporary Revision TR–94–1, to AFM CSP 100–1 (Metric), dated February 6, 2023.

(iii) Bombardier Challenger 350 Temporary Revision TR–25–1, to AFM CH 350, dated February 6, 2023.

(iv) ''Takeoff Configuration Warnings,'' of Chapter 3, ''Emergency Procedures,'' of the Bombardier Challenger 350 Airplane Flight Manual (AFM), Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 2 to paragraph (j)(2)(iv): For obtaining the checklists specified in paragraphs (j)(2)(iv) and (v) of this AD for the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(v) ''Before Starting Engines,'' of Chapter 4, ''Normal Procedures,'' of the Bombardier Challenger 350 AFM, Publication No. CH 350, Revision 38, dated May 11, 2023.

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

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

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

Issued on November 16, 2023.

Ross Landes,

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

[FR Doc. 2023–26257 Filed 11–24–23; 5:00 pm]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2024. This table is needed to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: This rule is effective January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3839. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected

retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (URA) (*i.e.,* the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at the unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by PBGC to reflect changes in the cost of living.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace table I–23 with table I–24 to provide an updated correlation, appropriate for calendar year 2024, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–24 will be used to value benefits in plans with valuation dates during calendar year 2024.

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC's update of appendix D for calendar year 2024 is routine. If a plan has a valuation date in 2024, the plan administrator needs the updated table being promulgated in this rule to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, and that good cause exists for making the table set forth in this amendment effective less than 30 days after publication to allow the use of the proper table to estimate the value of plan benefits for plans with valuation dates in early 2024.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing table I–23 and adding in its place table I–24 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–24—SELECTION OF RETIREMENT RATE CATEGORY

[For valuation dates in 2024 [1]]

If participant reaches URA in year—	Participant's retirement rate category is—			
	Low [2] if monthly benefit at URA is less than—	Medium [3] if monthly benefit at URA is—		High [4] if monthly benefit at URA is greater than—
		From—	To—	
2025	802	802	3,388	3,388
2026	821	821	3,466	3,466
2027	839	839	3,546	3,546
2028	859	859	3,627	3,627
2029	879	879	3,711	3,711
2030	899	899	3,796	3,796
2031	919	919	3,883	3,883
2032	941	941	3,973	3,973
2033	962	962	4,064	4,064
2034 or later	984	984	4,157	4,157

[1] Applicable tables for valuation dates before 2024 are available on PBGC's website (*www.pbgc.gov*).
[2] Table II–A.
[3] Table II–B.
[4] Table II–C.

* * * * *

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–26238 Filed 11–28–23; 8:45 am]

BILLING CODE 7709–02–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 386

[Docket No 23–CRB–0010–SA–COLA (2024)]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 3.2% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2022 to October 2023.

DATES:

Effective date: November 29, 2023.

Applicability dates: These rates are applicable to the period January 1, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the distant retransmission of television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and reauthorized the license for additional five-year periods until 2019 when it made the license permanent.[1]

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers [2] and were unopposed. *Id.* section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty fee payable under section 119(b)(1)(B) ''to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published by the Secretary of Labor before December 1 of the preceding year.'' Section 119 also requires that ''[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.'' 17 U.S.C. 119(c)(2).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2022, to the most recent index published before December 1, 2023, is 3.2%.[3] Application of the 3.2% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—34 cents per subscriber per month—results in a rate of 35 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 3.2% COLA to the current rate for viewing in commercial establishments—70 cents per subscriber per month—results in a rate of 72 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(xiv) and (b)(2)(xiv) to read as follows:

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

* * * * *

(b) * * *

(1) * * *

(xiv) 2024: 35 cents per subscriber per month.

(2) * * *

(xiv) 2024: 72 cents per subscriber per month.

Dated: November 21, 2023.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2023–26122 Filed 11–28–23; 8:45 am]

BILLING CODE 1410–72–P

[1] The most recent five-year reauthorization was pursuant to the STELA Reauthorization Act of 2014, Public Law 113–200. The license was made permanent by the Satellite Television Community Protection and Promotion Act of 2019, Public Law 116–94, div. P, title XI, section 1102(a), (c)(1), 133 Stat. 3201, 3203.

[2] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

[3] On November 14, 2023, the Bureau of Labor Statistics announced that the CPI–U increased 3.2% over the last 12 months.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221206–0261]

RIN 0648–BM72

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2023–2024 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries for the 2024 fishing year. This action is intended to allow commercial and recreational fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective January 1, 2024.

ADDRESSES: *Electronic Access:* This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *https://www.pcouncil.org/* including and supporting information for the Council's recommendations at the November 2023 meeting.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–247–8252 or email: *keeley.kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2 year periods (*i.e.,* a biennium). NMFS published the final

rule to implement harvest specifications and management measures for the 2023–2024 biennium for most species managed under the PCGFMP on December 16, 2022 (87 FR 77007). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL], and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* Annual Catch Targets [ACTs], trip limits, area closures, and bag limits) that are meant to mitigate catch so as not to exceed the harvest specifications. The harvest specifications and mitigation measures developed for the 2023–2024 biennium used data through the 2021 fishing year. Each of the adjustments to mitigation measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to mitigation measures are projected so as to help harvesters achieve but not exceed the harvest limits.

At its November 2023 meeting, the Council recommended that NMFS extend the duration of several measures implemented through an inseason published on October 2, 2023 (88 FR 67656), to continue the minimization of mortality of quillback rockfish off California for the 2024 fishing season. The Council also recommended NMFS reset trip limits for several species for the 2024 fishing season.

Quillback Rockfish Off California

Under current management, quillback rockfish are a contributing species within the Minor Nearshore Rockfish complex north and south of 40°10′ N lat. The harvest specifications for this species (ACL, ABC, and OFL) contribute to the harvest specifications of the complex. Amendment 31 to the PCGFMP, which was approved on November 13, 2023, defined quillback rockfish as three separate stocks (Washington, Oregon, and California).

In an analysis for the November 2021 Council meeting, a report by the Groundfish Management Team (GMT) showed continued exceedances of the OFL contribution of quillback rockfish to the nearshore rockfish complex every year in all 4 years between 2017 and 2020 (Agenda Item E.3.a GMT Report 2, November 2021). Additionally, the Council noted that quillback rockfish has a 2.22 vulnerability score, making it one of the most vulnerable rockfishes in the PCGFMP. For these reasons, the Council recommended species-specific ACTs for quillback rockfish off the coast of California as part of the 2023–24 harvest specifications and management measures (87 FR 77007, December 16, 2022) to support better tracking of mortality in light of the depleted nature of quillback off California.

Quillback rockfish have a shared commercial and recreational species-specific ACT of 0.87 metric tons (mt) for the area between 42° N lat. and 40°10′ N lat. and 0.89 mt for south of 40°10′ N lat. (see 50 CFR part 660, tables 1a and 2a to subpart C). The ACTs were set under the 2023–24 Groundfish Harvest Specifications and Management Measures action in response to the 2021 stock assessment for quillback rockfish off the coast of California, which has been deemed the best scientific information available by NOAA Fisheries and the scientific advisors to the Council. Given quillback rockfish are currently managed in a stock complex, the new ACT was meant to formalize the ACL contributions for management purposes. Setting the ACTs equal to the ACL contributions allows the Council to recommend necessary management measures inseason when the ACL contribution is met or projected to be met.

At the November 2023 Council meeting, the PFMC recommended inseason changes to commercial fisheries in order to limit the mortality of quillback rockfish off California for 2024. The ACTs, and OFL contributions for the stock of quillback rockfish off California were estimated to be significantly exceeded in 2023 (see 88 FR 67656, October 2, 2023, for more information). Further action relative to mortality of quillback rockfish off California in the recreational fisheries is expected at the March 2024 PFMC meeting.

At the November 2023 meeting, the Council's GMT conducted analysis to see if there were any particular aspects of the fishery (by sector, location, gear type, *etc.*) where quillback were most commonly encountered, in order to narrow the scope of potential restrictions that may be most effective at reducing further impacts to quillback rockfish for 2024.

The limited available spatial data indicated that quillback rockfish are very rarely encountered south of 36° N latitude. Additionally, the data available suggest that quillback rockfish off California north of 36° N latitude are rarely encountered in waters deeper than 50 fathoms (fm) (91.4 meters (m)) but that the depth ranges where they are most commonly encountered varies somewhat by latitude with more attributed catches in shallower depths (*e.g.,* 11–30 fathoms, 20.1–54.9 m) in the more northern areas and deeper than 20 fathoms (36.6 m) in southern parts of the California coast.

The GMT also looked at whether the legal non-bottom contact hook-and-line gear allowed in the non-trawl rockfish conservation area (RCA) (50 CFR 660.330(b)(3)) has been encountering quillback rockfish. This gear was a new management measure under the 2023–24 harvest specifications and management measures (87 FR 77007, December 16, 2022) within the non-trawl RCA in order to provide additional opportunity to commercial non-trawl fisheries to target healthy stocks while relieving pressure on depleted or constraining nearshore stocks. While data is limited so far, the gear configurations have shown to have relatively low bycatch of groundfish species of concern while being able to harvest healthy midwater rockfish. In the 14 years the three Experimental Fishing Permits (EFPs) operated that used similar gear (Emley-Platt, Real Good Fish, and Oregon Cook EFP), a total of only three quillback rockfish were caught. Further analysis showed that of the 108 mt of total catch in all three EFPs combined, approximately only 3 percent was quillback rockfish.

In light of this new information, the Council recommended limiting the reductions in trip limits by gear type and by area in order to maintain some fishing opportunity with limited quillback rockfish impacts, and focusing action on the sectors with greater quillback impacts. The recommendations from the Council are projected to reduce discard mortality of quillback rockfish in order to address depletion while minimizing the economic impact to fishing communities to the extent possible.

The Council recommended and, by revising tables 2 North and South to part 660, subpart E, and tables 3 North and South to part 660, subpart F, NMFS is implementing an expansion of the shoreward extent of the non-trawl RCA

off California. Currently, the shoreward boundary off California is either 40 or 50 fathoms (73 meters (m) or 91 m), depending on latitude. This action moves the boundary to the shoreward boundary of the EEZ (3 nautical miles (5556 m) from shore). This closure reduces access to demersal co-occurring targets in the range of quillback rockfish. While new area will be closed to bottom-contact gears, legal non-bottom contact hook-and-line gear are allowed in the non-trawl RCA (50 CFR 660.330(b)(3)). This change to the shoreward extent of the non-trawl RCA allows fishery participants to continue to access healthy midwater stocks inside the non-trawl RCA, consistent with § 660.330(b)(3).

Additionally, the Council recommended and, by revising tables 2 North and South to part 660, subpart E, and tables 3 North and South to part 660, subpart F, NMFS is extending the non-trawl RCA south of 34° 27′ N lat. in the 100–150 fm (183 m–274 m) depths to include additional islands and banks that were formerly in the Cowcod Conservation Area (CCA) (for more information see 88 FR 59838, August 30, 2023). This change, which expands the non-trawl RCA, is being promulgated as a precautionary measure because recreational fishing may increase fishing pressure in areas which were historically closed for some or all of the year, and this anticipated increase in anglers may increase catch of constraining species such as copper rockfish, vermilion/sunset rockfish and/or species with prohibited retention such as bronzespotted rockfish and cowcod. Similarly, commercial fisheries operating in these depths around the islands and banks may increase the likelihood of interactions with prohibited species (*e.g.,* cowcod and bronzespotted rockfish). Additionally, the consistency in areas formerly closed by the CCA with the RCA lines in use along the mainland coast and Channel Islands south of Point Conception (34° 27′ N lat.) will reduce regulatory complexity for stakeholders.

The Council also recommended and, by modifying tables 2 North and South to part 660, subpart E, and tables 3 North and South to part 660, subpart F, NMFS is implementing a zero pound trip limit for limited entry (LE) and open access (OA) fisheries between 42° N latitude and 36° N latitude for the following targets for all cumulative periods in 2024: Nearshore Rockfish complex and cabezon. These targets are only found in depths co-occurring with quillback rockfish, so in order to reduce quillback discard mortality, fishing on these targets is not allowed.

The Council recommended and, by modifying tables 2 North and South to part 660, subpart E, and tables 3 North and South to part 660, subpart F, NMFS is implementing an area-based trip limit for LE and OA fisheries between 42° N latitude and 36° N latitude seaward of the non-trawl RCA for the following targets for all cumulative periods in 2024: lingcod and other flatfish. Inside of the non-trawl RCA, the trip limit is zero pounds for LE and OA fisheries for both lingcod and other flatfish, which co-occur with quillback rockfish, in order to reduce quillback discard mortality. The area-based trip limits will allow access to these stocks in deeper waters, seaward of the non-trawl RCA, where they do not co-occur with quillback rockfish, providing fishing opportunity in this area.

Minor Shelf Rockfish; Vermilion/Sunset Rockfish

Vermilion/Sunset rockfish off California are currently managed as part of the Minor Shelf Rockfish complex, south of 40°10′ N latitude; as well as the Minor Shelf Rockfish complex north of 40°10′ N latitude, but only in the area between 42° and 40°10′ N lat. For 2024, the southern complex has an ACL of 1,469 metric tons (mt), and vermilion/sunset rockfish has an ACL contribution of 281.29 mt; the northern complex has an ACL of 1,278 mt, and vermilion/sunset rockfish has an ACL contribution of 6.62 mt within it.

With the changes described above, which will shift fishing effort from the nearshore out to the shelf, concerns about limiting shelf stocks, specifically minor shelf rockfish and vermilion/sunset rockfish, arose. The GMT analyzed reductions to the trip limits for Minor Shelf Rockfish in the LE and OA sectors off California. Based on the GMT analysis, the Council recommended reducing the trip limits, in anticipation of increased effort. The expected mortality by sector under current limits and under the recommended changes are shown in table 1.

TABLE 1—OPTIONS CONSIDERED BY THE COUNCIL TO ADJUST MINOR SHELF ROCKFISH TRIP LIMITS BY PERIOD IN THE LEN (LIMITED ENTRY NORTH) (40°10′–42° N LAT.), LES (LIMITED ENTRY SOUTH) (40°10′–36° N LAT.), OAN (OPEN ACCESS NORTH) (40°10′–42° N LAT.), AND OAS (OPEN ACCESS NORTH) (40°10′–36° N LAT.) SECTORS, ASSOCIATED LANDINGS PROJECTIONS, AND TOTAL LANDINGS

[Bolded row represents the GMT recommendation, which was adopted by the Council. There is no geographic harvest target to compare estimated total landings against the trip limit change due to the split at 36° N lat.]

Option	Sector	Trip limit	Est. total landings (mt)	Estimated total landings (mt)
No Action	LEN	800 lbs. (363 kg)/mo	0.6	101
	OAN	800 lbs. (363 kg)/mo	5.0	
	LES	8,000 lbs. (3,629 kg)/2 mos	11.8	
	OAS	4,000 lbs. (1,814 kg)/2 mos	83.6	
Option 1	**LEN**	**800 lbs. (363 kg)/mo**	**0.6**	84.9
	OAN	**600 lbs. (272 kg)/mo**	**4.7**	
	LES	**6,000 lbs. (2,722 kg)/2 mos**	**11.6**	
	OAS	**3,000 lbs. (1,361 kg)/2 mos**	**68.0**	
Option 2	LEN	800 lbs. (363 kg)/mo	0.6	71.8
	OAN	400 lbs. (181 kg)/mo	4.6	
	LES	4,000 lbs. (1,814 kg)/2 mos	10.6	
	OAS	2,000 lbs. (907 kg)/2 mos	56.0	

Additionally, within the Minor Shelf Rockfish Complex, vermilion rockfish south of 40°10′ ACL contribution is projected to be exceeded in 2023 and therefore the Council determined that additional trip limit reductions should be taken for 2024. Consequently, the Council recommended and NMFS is approving this change by modifying

tables 2 and 3 North and South for all cumulative periods in 2024. The expected mortality by sector under current limits and under the recommended changes are shown in table 2.

TABLE 2—PROJECTED LANDINGS OF VERMILION/SUNSET, VERMILION/SUNSET ALLOCATION, AND PROJECTED PERCENTAGE OF VERMILION/SUNSET ATTAINED THROUGH THE END OF THE YEAR BY CURRENT TRIP LIMIT AND FISHERY

[LEN (40°10′ N lat.–34°27′ N lat.). LES (south of 34°27′ N lat.). OAN (40°10′ N lat.–34°27′ N lat.). OAS (south of 34°27′ N lat.). Bolded row represents the GMT recommendation which was recommended by the Council to NMFS.]

	Sector, option	Trip limit	Landing projection (mt)	Est. total landings (mt)	Est. discard mortality (mt)	Est. total mortality (mt)
No Action	LEN	500 lbs. (227 kg)/2 mos	2.4	90.9	0.1	91.0
	OAN	400 lbs. (181 kg)/2 mos	17.8			
	LES	3,000 lbs. (1,361 kg)/2 mos	35.1			
	OAS	1,200 lbs. (544 kg)/2 mos	35.6			
Option 1	**LEN**	**500 lbs. (227 kg)/2 mos**	**2.4**	**77.7**	**0.1**	**77.8**
	OAN	**300 lbs. (136 kg)/2 mos**	**13.4**			
	LES	**3,000 lbs. (1,361 kg)/2 mos**	**35.1**			
	OAS	**900 lbs. (408 kg)/2 mos**	**26.8**			

Bocaccio Rockfish South of 40°10′ N Lat.

Bocaccio on the West Coast is managed as a separate stock south of 40°10′ N lat., while bocaccio north of 40°10′ N lat. is managed as part of the minor shelf rockfish complex north of 40°10′ N lat. Bocaccio south of 40°10′ N lat., the subject of this action, is caught both commercially and recreationally, with commercial vessels harvesting it with both trawl and fixed gear (longlines and pots/traps) in the bottom trawl, nearshore, limited entry, and open access fixed gear fisheries. It is caught in shelf and nearshore areas, often together with chilipepper rockfish. The 2024 ACL and harvest guideline for bocaccio south of 40°10′ N lat. are 1,828 mt, and 1,779.9 mt, respectively.

Subsequent to the June 2023 Council meeting, the Council recommended and NMFS implemented increases to the bocaccio trip limits for the LE and OA sectors through table 2 South and table 3 South such that the new limits were set at 8,000 lb (3,629 kg) per period for LE and 6,000 pounds (2,721 kg) per period for OA. Subsequent to the September 2023 Council meeting, the Council recommended revising the bocaccio trip limits between 40°10 ′ and 34°27′ N lat. for both sectors due to concerns due to quillback rockfish off California. NMFS implemented via inseason action a zero bag limit for bocaccio in the LE sector for period 6 in 2023 and a gear restriction for the existing bag limit for bocaccio in the OA sector (see 88 FR 67656, October 2, 2023). As part of the November 2023 analysis, the GMT concluded that there is minimal expected impact of target fishing for bocaccio on quillback rockfish as bocaccio is a midwater species and quillback rockfish are demersal and therefore they are not co-occurring. Therefore, the Council recommended applying the trip limits in place for each sector for periods 1–5 to period 6 for 2024. NMFS is implementing this change through revisions to table 2 South and table 3 South.

Other Flatfish

Fishing for ''other flatfish '' off California as defined at § 660.11 General definitions (between 42° N lat. south to the U.S./Mexico border) is allowed within the non-trawl RCA with hook and line gear only (§ 660.330(d)(12)(iv)). To prevent the possible interaction with quillback rockfish within the RCA, the Council recommended reducing the ''other flatfish'' trip limit to 0 lbs./2 months between 42° N lat. to 36° N lat. inside the Non-Trawl RCA, and maintaining the current trip limits seaward of the Non-Trawl RCA. This modification would allow for the opportunity to land other flatfish caught seaward of the RCA while preventing interactions with quillback rockfish.

Lingcod

Prior to the November 2023 meeting, the GMT received a request to increase the lingcod trip limits north of 42° N lat. to reduce regulatory discarding and increase economic opportunity. Status quo is currently resulting in regulatory discard for certain participants in the fishery. Lingcod is managed with an ACL north of 40°10′ N lat. and an ACL south of 40°10′ N lat. The 2024 ACL for lingcod north of 40°10′ N lat. is 3,854 mt.

To evaluate potential increases to lingcod trip limits north of 42° N lat., the GMT made model-based landings projections under current regulations and alternative trip limits, including the limits ultimately recommended by the Council, for the LE and OA fisheries through the remainder of the year. Table 3 shows the projected lingcod landings, the lingcod allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits for north of 42° N lat. These projections were based on the most recent catch information available through late October 2023.

TABLE 3—PROJECTED LANDINGS OF LINGCOD, LINGCOD ALLOCATION, AND PROJECTED PERCENTAGE OF LINGCOD NORTH OF 42° N LAT. ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)
LE North of 42° N lat	Current: 9,000 lb. (4,082.3 kg)/two months	157.63
OA North of 42° N lat	Current: 4,500 lb. (2,041.2 kg)/month.	
LE North of 42° N lat	Recommended: 11,000 lb. (4,989.5 kg)/two months	173.45
OA North of 42° N lat	Recommended: 5,500 lb. (2,494.8 kg)/month.	

Under the current trip limits, the model predicts catches of lingcod north of 42° N lat. will total 157.63 mt, which is 8 percent of the 2024 non-trawl allocation of lingcod (1,965.9 mt). Under the Council's recommended trip limits, lingcod mortality north of 42° N lat. is expected to increase to 173.45 mt, which is 9 percent of the 2024 non-trawl allocation of lingcod.

Trip limit increases for lingcod are intended to marginally increase attainment of the non-trawl allocation. The recommended trip limit increases do not appreciably change projected impacts to yelloweye rockfish (a co-occurring rebuilding species) compared to the impacts anticipated in the 2023–2024 harvest specifications because the projected impacts to those species assume that the entire lingcod ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying table 2 North to part 660, subpart E, and table 3 North to part 660, subpart F, trip limit changes for LE and OA lingcod north of 42° N lat. for all cumulative periods in 2024 as shown above in table 3.

Canary Rockfish

At the November 2023 meeting, the GMT evaluated a request to decrease the 2024 canary rockfish trip limits for the LE fixed gear and OA in light of the 2023 stock assessment indicating canary rockfish are below the healthy biomass management target. The request was to reverse a trip limit increase that was implemented pursuant to a November 2022 inseason action (88 FR 4910, January 26, 2023). Table 4 provides the projected landings, mortality, and attainment of the commercial share of canary under the status quo and under the recommended decrease in the limits.

TABLE 4—OPTIONS TO DECREASE CANARY TRIP LIMITS BY PERIOD IN THE LEN, OAN, LES, AND OAS SECTORS, ASSOCIATED LANDINGS PROJECTIONS, ESTIMATED MORTALITY, AND NON-TRAWL COMMERCIAL SHARE ATTAINMENT

[Bolded row represents the GMT recommendation that was adopted by the Council]

Option	Sector	Trip limit	Landing projection (mt)	Est. total landings (mt)	Est. discard mortality (mt)	Est. total mortality (mt)	% of the 2024 non-trawl commercial share (122.4 mt)
No Action	LEN	4,000 lbs. (1,814 kg)/2 mos	5.4	31.3	0.8	32.0	26
	OAN	2,000 lbs. (907 kg)/2 mos	3.9				
	LES	4,000 lbs. (1,814 kg)/2 mos	8.7				
	OAS	2,000 lbs. (907 kg)/2 mos	13.3				
Option 1	**LEN**	**3,000 lbs. (1,361 kg)/2 mos**	**4.0**	**23.9**	**0.6**	**24.5**	**20**
	OAN	**1,000 lbs. (454 kg)/2 mos**	**3.4**				
	LES	**3,500 lbs. (1,588 kg)/2 mos**	**6.5**				
	OAS	**1,500 lbs. (680 kg)/2 mos**	**10.0**				

Therefore, the Council recommended, and by modifying tables 2 North and South and tables 3 North and South, NMFS is implementing a revision to the LE and OA trip limits for all cumulative periods in 2024 as shown in table 4 above. The adjustment will provide proactive adjustment looking to the 2025–2026 biennium.

Longleader (Holloway Gear)—Oregon Recreational Fishery

The longleader gear is used to harvest midwater rockfish seaward of the 40-fathom regulatory line. Due to low impacts to yelloweye rockfish and other benthic species, the bag limit for this fishery has been higher than the nearshore traditional bottomfish bag limit. In 2023, the bag limit was increased from 10 fish to 15 fish as a way to further entice anglers to participate in the offshore fishery to alleviate some of the fishing pressure from the nearshore reefs. For 2024, the GMT recommended decreasing the Oregon longleader fishery bag limit to 12 fish due to an increase of canary rockfish, a limiting stock, encountered in the fishery and to be consistent with state regulatory action which decreased bag limits in state waters. Consequently, the Council recommended and NMFS is implementing this change in the bag limit by modifying 50 CFR 660.360(c)(2)(iii)(A).

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting the NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Changes of this nature were anticipated in the final rule for the 2023–24 harvest specifications and management measures which published on December 16, 2022 (87 FR 76007). The majority of the adjustments to management measures in this action address a conservation concern for quillback rockfish off of California as new information demonstrates the current management measures are not sufficient to control mortality as is needed. Therefore, providing a comment period for this action could hamper the adherence to scientifically informed reference points, created to ensure sustainability of the affected fisheries, and would delay measures intended to address localized depletion of quillback rockfish. In addition, by allowing for fishing in areas where quillback rockfish are not likely to occur and through trip limit increases for lingcod, this action is expected to potentially increase economic value of the fisheries by increasing harvest opportunity and reducing regulatory discards. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry, because the new regulations could not be implemented in time to realize the projected benefits to fishing communities. For these same reasons, NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective on

January 1, 2024, for the start of the new fishing year.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: November 20, 2023.

Kelly Denit,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Revise table 2 (North) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N lat.		Shoreward EEZ - 100 fm line[1/]					
2	46°16' N lat. - 42°00' N lat.		30 fm line[1/] - 75 fm line[1/]					
3	42°00' N lat. - 40°10' N lat.		Shoreward EEZ - 75 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		8,000 lb/ 2 months					
4	**Pacific ocean perch**		3,600 lb/ 2 months					
5	**Sablefish**		4,500 lb/ week, not to exceed 9,000 lb /2 months					
6	**Longspine thornyhead**		10,000 lb/ 2 months					
7	**Shortspine thornyhead**		2,000 lb/ 2 months			2,500 lb/ 2 months		
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder**		10,000 lb/ month					
9	**Other Flatfish[3/]**							
10		North of 42°00' N lat.	10,000 lb/ month					
11		42°00' N lat. - 40°10' N lat.	10,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
12	**Whiting**		10,000 lb/ trip					
13	**Minor Shelf Rockfish[2/]**		800 lb/ month					
14	**Widow rockfish**		4,000 lb/ 2 months					
15	**Yellowtail rockfish**		3,000 lb/ month					
16	**Canary rockfish**		3,000 lb/ 2 months					
17	**Yelloweye rockfish**		CLOSED					
18	**Quillback rockfish**							
19		42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
20	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish[4/]**							
21		North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[3/]					
22		42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	0 lb/ 2 months					
23		42°00' N lat. - 40°10' N lat. Black Rockfish	0 lb/ 2 months					
24	**Lingcod[5/]**							
25		North of 42°00' N lat.	11,000 lb/ 2 months					
26		42°00' N lat. - 40°10' N lat.	2,000 lb/ 2 months seaward of the non-trawl RCA; 0 lb/ 2 months inside the non-trawl RCA					
27	**Pacific cod**		1,000 lb/ 2 months					
28	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
29	**Longnose skate**		Unlimited					
30	**Other Fish[6/]**		Unlimited					
31	**Cabezon in California**		0 lb/ 2 months					
32	**Oregon Cabezon/Kelp Greenling**		Unlimited					
33	**Big skate**		Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.* , federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) total length South of 42° N lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Revise table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**		40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**		40,000 lb/ 2 months					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	4,500 lb/ week, not to exceed 9,000 lb /2 months					
8		South of 36°00' N lat.	2,500 lb/ week					
9	**Longspine thornyhead**		10,000 lb/ 2 months					
10	**Shortspine thornyhead**							
11		40°10' N lat. - 34°27' N lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12		South of 34°27' N lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder**		10,000 lb/ month					
14	**Other Flatfish[3/]**							
15		40°10' N lat. - 36°00' N lat.	10,000 lb/ month					
16		South of 36°00' N lat.	10,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
17	**Whiting**		10,000 lb/ trip					
18	**Minor Shelf Rockfish[2/]**							
19		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months, of which no more than 500 lb may be vermilion					
20		South of 34°27' N lat.	6,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
21	**Widow rockfish**							
22		40°10' N lat. - 34°27' N lat.	10,000 lb/ 2 months					
23		South of 34°27' N lat.	8,000 lb/ 2 months					
24	**Chilipepper rockfish**							
25		40°10' N lat. - 34°27' N lat.	10,000 lb. / 2 months					
26		South of 34°27' N lat.	8,000 lb. / 2 months					
27	**Canary rockfish**		3,500 lb/ 2 months					
28	**Yelloweye rockfish**		CLOSED					
29	**Quillback rockfish**		0 lb/ 2 months					
30	**Cowcod**		CLOSED					
31	**Bronzespotted rockfish**		CLOSED					
32	**Bocaccio**		8,000 lb/ 2 months					
33	**Minor Nearshore Rockfish**							
34	40°10' N lat. - 36° N lat. Shallow nearshore[4/]		0 lb/ 2 months					
35	South of 36° N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
36	40°10' N lat. - 36° N lat. Deeper nearshore[5/]		0 lb/ 2 months					
37	South of 36° N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
38	**California Scorpionfish**		3,500 lb/ 2 months					
39	**Lingcod[6/]**							
40		40°10' N lat. - 36° N lat.	1,600 lb / 2 months seaward of the non-trawl RCA; 0 lb / 2 months inside the non-trawl RCA					
41		South of 36° N lat.	1,600 lb / 2 months					
42	**Pacific cod**		1,000 lb/ 2 months					
43	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
44	**Longnose skate**		Unlimited					
45	**Other Fish[7/]**		0 lb / 2 months					
46	**Cabezon in California**							
47	40°10' N lat. - 36° N lat.		0 lb/ 2 months					
48	South of 36° N lat.		Unlimited					
49	**Big Skate**		Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:								
1	North of 46°16' N lat.		Shoreward EEZ - 100 fm line[1/]					
2	46°16' N lat. - 42°00' N lat.		30 fm line[1/] - 75 fm line[1/]					
3	42°00' N lat. - 40°10' N lat.		Shoreward EEZ - 75 fm line[1/]					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).								
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		2,000 lb/ month					
5	**Pacific ocean perch**		100 lb/ month					
6	**Sablefish**		3,000 lb/ week, not to exceed 6,000 lb/ 2 months					
7	**Shortpine thornyheads**		50 lb/ month					
8	**Longspine thornyheads**		50 lb/ month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder[7/]**		5,000 lb/ month					
10	**Other Flatfish[3/]**							
11		North of 42°00' N lat.	5,000 lb/ month					
12		42°00' N lat. - 40°10' N lat.	5,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
13	**Whiting**		300 lb/ month					
14	**Minor Shelf Rockfish[2/]**							
15		North of 42°00' N lat.	800 lb/ month					
16		42°00' N lat. - 40°10' N lat.	600 lb/month					
17	**Widow rockfish**		2,000 lb/ 2 months					
18	**Yellowtail rockfish**		1,500 lb/month					
19	**Canary rockfish**		1,000 lb/ 2 months					
20	**Yelloweye rockfish**		CLOSED					
21	**Quillback rockfish**							
22		42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
23	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish**							
24		North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
25		42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	0 lb/ 2 months					
26		42°00' N lat. - 40°10' N lat. Black rockfish	0 lb/ 2 months					
27	**Lingcod[5/]**							
28		North of 42°00' N lat.	5,500 lb/ month					
29		42°00' N lat. - 40°10' N lat.	1,000 lb/ month seaward of the non-trawl RCA; 0 lb/ month inside the non-trawl RCA					
30	**Pacific cod**		1,000 lb/ 2 months					
31	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
32	**Longnose skate**		Unlimited					
33	**Big skate**		Unlimited					
34	**Other Fish[6/]**		Unlimited					
35	**Cabezon in California**		0 lb/ 2 months					
36	**Oregon Cabezon/Kelp Greenling**		Unlimited					
37	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*							
38	North		Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
39	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
40	North		Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.*, federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) South of 42° N lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Revise table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**		200 lb/ month					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	3,000 lb/ week, not to exceed 6,000 lb/ 2 months					
8		South of 36°00' N lat.	2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**							
10		40°10' N lat. - 34°27' N lat.	50 lb/ month					
11	**Longspine thornyheads**							
12		40°10' N lat. - 34°27' N lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**							
14		South of 34°27' N lat.	100 lb/ day, no more than 1,000 lb/ 2 months					
15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**		5,000 lb/ month					
16	**Other Flatfish[3/]**							
17		40°10' N lat. - 36°00' N lat.	5,000 lb/ month					
18		South of 36°00' N lat.	5,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
19	**Whiting**		300 lb/ month					
20	**Minor Shelf Rockfish[2/]**							
21		40°10' N lat. - 34°27' N lat.	3,000 lb/ 2 months, of which no more than 300 lb may be vermilion/sunset					
22		South of 34°27' N lat.	3,000 lb/ 2 months, of which no more than 900 lb may be vermilion/sunset					
23	**Widow rockfish**							
24		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
25		South of 34°27' N lat.	4,000 lb/ 2 months					
26	**Chilipepper rockfish**							
27		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
28		South of 34°27' N lat.	4,000 lb/ 2 months					
29	**Canary rockfish**		1,500 lb/ 2 months					
30	**Yelloweye rockfish**		CLOSED					
31	**Cowcod**		CLOSED					
32	**Bronzespotted rockfish**		CLOSED					
33	**Quillback rockfish**		0 lb/ 2 months					
34	**Bocaccio**		6,000 lb/ 2 months					
35	**Minor Nearshore Rockfish**							
36	40°10' N lat. - 36°00' N lat. Shallow nearshore[4/]		0 lb/ 2 months					
37	South of 36°00' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
38	40°10' N lat. - 36°00' N lat. Deeper nearshore[5/]		0 lb/ 2 months					
39	South of 36°00' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
40	**California Scorpionfish**		3,500 lb/ 2 months					
41	**Lingcod[6/]**							
42		40°10' N lat. - 36°00' N lat.	700 lb / month seaward of the non-trawl RCA; 0 lb/ month inside the non-trawl RCA					
43		South of 36°00' N lat.	700 lb / month					
44	**Pacific cod**		1,000 lb/ 2 months					
45	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
46	**Longnose skate**		Unlimited					
47	**Big skate**		Unlimited					
48	**Other Fish[7/]**		Unlimited					
49	**Cabezon in California**							
50		40°10' N lat. - 36°00' N lat.	0 lb/ month					
51		South of 36°00' N lat.	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.	Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.	50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
59	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
60	South of 40°10' N lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
61	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N lat., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
62	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
63	*40°10′ N lat. - 38°00′ N lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
64	*38°00′ N lat. - 34°27′ N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
65	*South of 34°27′ N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
66		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
67	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
69	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) South of 42° N lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 6. Amend § 660.360 by revising paragraph (c)(2)(iii)(A) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) *Marine fish.* The bag limit is 10 marine fish per day, which includes rockfish, kelp greenling, cabezon, and other groundfish species; except the daily bag limit in the long-leader gear fishery is 12 fish per day. The bag limit of marine fish excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines). The minimum size for cabezon retained in the Oregon recreational fishery is 16 in (41 cm) total length.

* * * * *

[FR Doc. 2023–26018 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 88, No. 228
Wednesday, November 29, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 54

[Docket ID OCC–2023–0011]

RIN 1557–AF21

FEDERAL RESERVE SYSTEM

12 CFR Parts 216, 217, 238, and 252

[Regulations P, Q, LL, and YY; Docket No. R–1815]

RIN 7100–AG66

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 374

RIN 3064–AF86

Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions; Extension of Comment Period

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 19, 2023, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies'') published in the **Federal Register** a proposal to require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and insured depository institutions, to issue and maintain outstanding a minimum amount of long-term debt. The agencies have determined that an extension of the comment period until January 16, 2024, is appropriate.

DATES: The comment period for the proposed rule published at 88 FR 64524 (September 19, 2023) is extended. Comments must be received by January 16, 2024.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2023–0011'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2023–0011'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2023–0011'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1815, RIN 7100–AG66 by any of the following methods:

Agency Website: https://www.federalreserve.gov. Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Email: regs.comments@federalreserve.gov. Include the docket number and RIN in the subject line of the message.

FAX: (202) 452–3819 or (202) 452–3102.

Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as

submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

FDIC: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AF86, by any of the following methods:

Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications. Follow instructions for submitting comments on the FDIC's website.

Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF86), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Hand Delivered/Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

Email: comments@FDIC.gov. Include ''RIN 3064–AF86'' on the subject line of the message.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Andrew Tschirhart, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Assistant Director, or Joanne Phillips, Counsel, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Molly Mahar, Senior Associate Director, (202) 973–7360, Juan Climent, Assistant Director, (202) 872–7526, Tudor Rus, Manager, (202) 475–6359, Francis Kuo, Lead Financial Institution Policy Analyst (202) 530–6224, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, Lars Arnesen, Senior Financial Institution Policy Analyst, (202) 452–2030, Division of Supervision and Regulation; or Charles Gray, Deputy General Counsel, (202) 510–3484, Reena Sahni, Associate General Counsel, (202) 452–3236, Jay Schwarz, Assistant General Counsel, (202) 452–2970, Josh Strazanac, Senior Counsel, (202) 452–2457, Brian Kesten, Counsel, (202) 475–6650, Jacob Fraley, Attorney, (202) 452–3127, Vivien Lee, Attorney, (202) 452–2029, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Andrew J. Felton, Deputy Director, (202) 898–3691; Ryan P. Tetrick, Deputy Director, (202) 898–7028; Elizabeth Falloon, Senior Advisor, (202) 898–6626; Julia E. Paris, Senior Cross-Border Specialist, (202) 898–3821, Division of Complex Institution Supervision and Resolution; R. Penfield Starke, Acting Deputy General Counsel, *rstarke@fdic.gov;* Celia P. Van Gorder, Acting Assistant General Counsel, (202) 898–6749; F. Angus Tarpley III, Counsel, (202) 898–8521; Dena S. Kessler, Counsel, (202) 898–3833, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On September 19, 2023, the agencies published in the **Federal Register** a proposal to require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and insured depository institutions, to issue and maintain outstanding a minimum amount of long-term debt.[1] The notice of proposed rulemaking stated that the comment period would close on November 30, 2023. The agencies have received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the proposal and prepare comments, including to address the questions posed by the agencies. Therefore, the agencies are extending the end of the comment period for the proposal from November 30, 2023, to January 16, 2024.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 20, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–26202 Filed 11–28–23; 8:45 am]

BILLING CODE 4810–33–6210–01–6714–01–P

[1] Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (September 19, 2023), *https://www.federalregister.gov/documents/2023/09/19/2023-19265/long-term-debt-requirements-for-large-bank-holding-companies-certain-intermediate-holding-companies.*

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2023–OPE–0039]

Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for Federal programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee. We also announce the creation of a subcommittee, and request nominations for individuals with pertinent expertise to participate on the subcommittee. The Department has also set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before December 13, 2023. The dates and times of the committee meetings are set out in the *Schedule for Negotiations* section in the **SUPPLEMENTARY INFORMATION** section. All meetings will be virtual.

ADDRESSES: Please email your nominations for negotiators to *negregnominations@ed.gov.* If you are unable to email your nomination, please contact Aaron Washington. Telephone: (202) 987–0911. Email: *aaron.washington@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking, see ''The Negotiated Rulemaking Process for Title IV Regulations—Frequently Asked Questions'' at *https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.* For information on the nomination submission process, email: *negregnominations@ed.gov.*

For information about the content of this document, including additional information about the negotiated rulemaking process, please contact Aaron Washington. Telephone: (202) 987–0911. Email: *aaron.washington@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:

Background

On March 24, 2023, we published in the **Federal Register** (88 FR 17777) an announcement of our intent to establish a negotiated rulemaking committee. We also announced public hearings at which interested parties could comment on the topics for negotiation suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings took place virtually on April 11–13, 2023.

You may view written comments submitted in response to the aforementioned **Federal Register** notification through the Federal eRulemaking Portal at *www.regulations.gov.* Instructions for finding comments are available on the site under ''FAQ.'' Enter Docket ID ED–2023–OPE–0039 in the search box to locate the appropriate docket.

Committee Topics

After considering the information received at the public hearing and the written comments, we have decided to establish the Program Integrity and Institutional Quality Committee (Committee) to address the following topics:

1. The Secretary's recognition of accrediting agencies under 34 CFR part 602 and related parts;

2. Institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9;

3. The requirements for distance education under 34 CFR 600.2 that pertain to clock hour programs and reporting for students who enroll primarily online;

4. Return of title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing the administrative burden for institutions of higher education under 34 CFR 668.22;

5. Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, and loss of such funds under 34 CFR part 668, subpart K; and

6. The eligibility requirements for participants in the Federal TRIO Programs.

As a part of the negotiated rulemaking process, we are forming a Federal TRIO Programs Subcommittee to expand the range of expertise and constituencies represented on this topic. The Committee will consider the subcommittee's recommendations in its consideration of proposed regulations relating to changes to participant eligibility requirements in the Federal TRIO Programs.

The subcommittee will address TRIO participant eligibility and make recommendations to the Committee. The subcommittee is not authorized to make decisions for the Committee. The subcommittee may be comprised of some members of the Committee (negotiators), as well as individuals who are not Committee members but who have expertise that will be helpful in developing proposed regulations. Therefore, in addition to asking for nominations for individual negotiators who represent key stakeholder constituencies for issues to be negotiated to serve on the Committee (see Constituencies for Negotiator Nominations), we seek nominations for individuals with expertise regarding the Federal TRIO Programs, particularly the eligibility requirements, to serve on the subcommittee. Before conclusion of the negotiations, the subcommittee will present its recommendations for regulatory changes to the Committee for its consideration.

We intend to select negotiators for the Committee who represent the interests of those significantly affected by the topics proposed for negotiation. In so doing, we will comply with the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations. We will also select negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the size manageable. We encourage negotiators, to the extent they are able, to demonstrate support from organizations, entities, or individuals beyond themselves.

We generally select a primary and alternate negotiator for each constituency represented on a committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary negotiator. The Department will provide more detailed information to both primary and alternate negotiators selected to participate on the Committee about the logistics and protocols of the meetings. The subcommittee will only include primary members. We will not select alternates for the subcommittee.

Members of the public may observe the Committee meetings, will have access to individuals representing their constituencies, and may be able to participate in informal working groups on issues between the meetings.

At the end of each day of the main committee meetings (except for the final day of the final session), the Department will reserve 30 minutes for public comment. We will provide information on how to request time to speak on our website at *www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.* We will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a speaker. An individual may make only one presentation during the public comment periods. If we receive more registrations than we can accommodate, we reserve the right to reject the registration of an entity or individual affiliated with an entity to present comments to ensure that a broad range of entities and individuals are able to present.

Constituencies for Negotiator Nominations

We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiation. We plan to include negotiators who represent these constituencies. We particularly encourage individuals or organizations representing the interests of historically underserved or low-income communities to nominate themselves. We also encourage institutions of higher education that are currently recipients of a Federal TRIO Program grant to submit nominations under the appropriate constituency on the main committee.

Nominations should include evidence of the nominee's specific knowledge of the issues listed under the Committee Topics heading earlier in this notice. The Department strongly encourages nominees to list all constituencies under which they would like to be considered. The Department reserves the discretion to have a nominee represent a constituency based upon their background and experience even if the individual was not nominated for that specific category. Constituencies for the Committee are:

(1) Civil rights organizations and consumer advocates.

(2) Legal assistance organizations.

(3) State officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education.

(4) State attorneys general.

(5) Students or borrowers, including currently enrolled borrowers, or groups representing them.

(6) U.S. military service members, veterans, or groups representing them.

(7) Public four-year institutions of higher education.

(8) Public two-year institutions of higher education.

(9) Private nonprofit institutions of higher education.

(10) Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-serving institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA).

(11) Proprietary institutions of higher education.

(12) Institutional accrediting agencies recognized by the Secretary.

(13) Programmatic accrediting agencies recognized by the Secretary, to include State agencies recognized for the approval of nurse education.

(14) Financial aid administrators.

(15) Business officers from institutions of higher education.

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of a negotiating committee, including the committee member representing the Department.

A negotiator is expected to represent the interests of their constituency and to participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by a member of such an organization.

We are also interested in nominations for members of the Federal TRIO Programs Subcommittee from individuals who represent the following groups:

(1) Institutions of higher education.

(2) Public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth.

(3) Secondary schools, including local educational agencies with secondary schools.

(4) Current or former participants in a Federal TRIO Program.

(5) State officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education.

We encourage institutions of higher education, public and private agencies and organizations, and secondary schools that are currently recipients of a Federal TRIO Program grant to submit nominations.

Nominations

We request that nominations for both the committee and the subcommittee include the information described in this section.

(1) The name of the nominee;

(2) The name of the constituency (or constituencies) for which the nominee is being nominated (see *Constituencies for Negotiator Nominations*);

(3) The nominee's place of employment or institution at which they are or were enrolled and, if different, the organization the nominee represents;

(4) A resume or evidence of the nominee's expertise and experience in the topics proposed for negotiations; and

(5) The nominee's contact information, including email address, telephone number, and mailing address.

Please see the **ADDRESSES** section for submission information. We will confirm receipt of nominations to the submitter. The Department will provide additional information to those we select to serve as negotiators. Once complete, a list of negotiators will be posted here: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.* The Department will also provide information at that site about how any committee vacancies can be filled at the beginning of the first committee meeting.

Schedule for Negotiations

The Committee will meet for three sessions on the following dates:

Session 1: January 8–11, 2024.

Session 2: February 5–8, 2024.

Session 3: March 4–7, 2024.

Session times will be from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m., with a public comment period from approximately 3:30 p.m. to 4 p.m., Eastern time.

The subcommittee will meet for two sessions on the following dates:

Session 1: January 12, 2024.

Session 2: February 9, 2024.

Session times will be from 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m., Eastern time. There will not be a public comment period for the subcommittee meetings.

All sessions will be conducted virtually and available for the public to view. Individuals who wish to observe the committee meetings will be required to register for each session they would like to observe. We will post registration links closer to the start of negotiations on our website at *www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.* The Department will also post recordings and transcripts of the meetings on that site.

Accessible Format: On request to the program contact person 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 Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access the 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.

Authority: Program Authority: 20 U.S.C. 1098a.

Nasser H. Paydar,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2023–26198 Filed 11–28–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR245]

Endangered and Threatened Wildlife and Plants; Seven Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that seven species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list Edison's ascyrum (*Hypericum edisonianum*), Florida (lowland) loosestrife (*Lythrum flagellare*), Florida pinesnake (*Pituophis melanoleucus mugitu*), mimic cavesnail (*Phreatodrobia imitata*), northern cavefish (*Amblyopsis spelaea*), smallscale darter (*Etheostoma microlepidum*), and Texas troglobitic water slater (*Lirceolus smithii*). However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on November 29, 2023.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at *https://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Edison's ascyrum	FWS–R4–ES–2023–0172
Florida (lowland) loosestrife	FWS–R4–ES–2023–0173
Florida pinesnake	FWS–R4–ES–2023–0174
Mimic cavesnail	FWS–R2–ES–2023–0175
Northern cavefish	FWS–R4–ES–2023–0176
Smallscale darter	FWS–R4–ES–2023–0177
Texas troglobitic water slater	FWS–R2–ES–2023–0178

Those descriptions are also available by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Edison's ascyrum, Florida (lowland) loosestrife, and Florida pinesnake.	Lourdes Mena, Division Manager, Florida Ecological Services Field Office, *lourdes_mena@fws.gov*, 904–460–4970.
Mimic cavesnail and Texas troglobitic water slater.	Karen Myers, Field Supervisor, Austin Ecological Services Field Office, *karen_myers@fws.gov*, 512–937–7371.
Northern cavefish	Lee Andrews, Field Supervisor, Kentucky Ecological Services Field Office, *lee_andrews@fws.gov*, 502–695–0468 ext. 46108.
Smallscale darter	Dan Elbert, Field Supervisor, Tennessee Ecological Services Field Office, *daniel_elbert@fws.gov*, 931–525–4973.

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:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding on whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but precluded by other listing activity. We must publish a notification of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife

which interbreeds when mature. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary of the Interior determines whether the species meets the Act's definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Edison's ascyrum, Florida (lowland) loosestrife, Florida pinesnake, mimic cavesnail, northern cavefish, smallscale darter, or Texas troglobitic water slater meet the Act's definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information for all of these species. Our evaluation may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

In accordance with the regulations at 50 CFR 424.14(h)(2)(i), this document announces the not-warranted findings on petitions to list seven species. We have also elected to include brief summaries of the analyses on which these findings are based. We provide the full analyses, including the reasons and data on which the findings are based, in the decisional file for each of the seven actions included in this document. The following is a description of the documents containing these analyses:

The species assessment forms for the Edison's ascyrum, Florida (lowland) loosestrife, Florida pinesnake, mimic cavesnail, northern cavefish, smallscale darter, and Texas troglobitic water slater contain more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that these species do not meet the Act's definition of an ''endangered species'' or a ''threatened species.'' To inform our status reviews, we completed species status assessment (SSA) reports for these seven species. Each SSA report contains a thorough review of the taxonomy, life history, ecology, current status, and projected future status for each species. This supporting information can be found on the internet at *https://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above).

Edison's Ascyrum

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands to list 404 aquatic, riparian, and wetland species, including Edison's ascyrum, as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding that the petition contained substantial information indicating that listing may be warranted for Edison's ascyrum. This document constitutes our 12-month finding on the 2010 petition to list Edison's ascryum under the Act.

Summary of Finding

Edison's ascyrum is a small colonial shrub in the St. John's wort family (Hypericaceae) that can grow to 1.5 meters (m) (5 feet (ft)) tall. The species occurs most abundantly in seasonal ponds (*i.e.,* depression marshes), but

also inhabits flatwoods, wet prairies, cutthroat grass seeps, lake margins, and occasionally roadsides and semi-native pastures. Edison's ascyrum is confined mostly to the southern Lake Wales Ridge in central peninsular Florida. The Lake Wales Ridge is a 186-kilometer (km) (116-mile (mi)) long, major geomorphological feature stretching from just south of Lake Harris in Lake County to near the Highlands/Glades County line. The species was historically known from only Highlands and Glades Counties, and it currently occurs in abundance in these two counties. Additional vouchered counties include DeSoto, Polk, and Collier.

Edison's ascyrum can flower year-round but usually reproduces via clonal propagation. Genets (genetically distinct individuals) are usually composed of several ramets that sprout from underground rhizomes. Edison's ascyrum is able to rapidly regenerate ramets following disturbances such as fire and prolonged inundation, which likely enhances both genet fitness and persistence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Edison's ascyrum, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats identified for Edison's ascyrum's biological status include habitat loss and degradation, changes in fire patterns, and hydrological changes. Habitat loss and degradation are expected to be driven by development, which, along with climate change, will potentially cause hydrological changes. However, approximately 77 percent of the known occurrences are on conservation lands, which are managed in ways that benefit the species and its habitat. Since recent estimates of population size were not available for most features, we used a habitat-based approach to assess the resiliency of each analysis unit. Specifically, we considered four factors: area of available habitat, percentage of incompatible land use, habitat protection, and habitat management. Thirteen of the 22 analysis units (AUs) identified throughout the species' range have moderate to high resiliency. Through this resiliency assessment, we found that AUs that exhibit a moderate or high rank for habitat management are distributed throughout the range. There is some risk from development, altered hydrology, and altered fire patterns due to the localized nature of this species' range, but the species is thriving in several areas under long-term protection and management. Although the species has a narrow range, four of the AUs of high-moderate to high resiliency are distributed from north to south across Avon Park Air Force Range, Archbold Biological Station, and Fisheating Creek Wildlife Management Area. Thus, after assessing the best available information, we conclude that the Edison's ascyrum is not in danger of extinction throughout all of its range.

We then considered whether the species is likely to become in danger of extinction within the foreseeable future throughout its range. Habitat loss and degradation, fire exclusion, and hydrological changes are the biggest threats to the species in the future. Habitat loss and degradation in the future is expected to be driven by population growth and development in the species' habitat, as well as hydrological changes due to development and climate change. We evaluated the future condition of the species under two future scenarios at two timesteps (2040 and 2070). In the future, resiliency is projected to vary between AUs, but the species is projected to be represented by moderate to high resiliency populations throughout its range. The distribution of moderate to high resiliency populations across the range on protected lands may minimize the likelihood of a catastrophic event affecting the species rangewide. Additionally, under both scenarios and for both timesteps, AUs not expected to decrease in resiliency remain spread across the range of the species. Under scenario 1, resiliency is projected to decrease in 8 AUs by 2040, and 12 AUs by 2070. Under scenario 2, under both timesteps, resiliency is projected to decrease in 5 AUs. Overall, the species will remain represented across the range. In addition, 77 percent of the known occurrences are on conservation lands. Thus, after assessing the best available information, we conclude that Edison's ascyrum is not in danger of extinction throughout all of its range now, or within the foreseeable future.

We also evaluated whether the Edison's ascyrum is endangered or threatened in a significant portion of its range. We did not find any portions of the Edison's ascyrum's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion, either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the Edison's ascyrum is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that Edison's ascyrum is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Edison's ascyrum as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Edison's ascyrum species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0172 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Edison's ascyrum SSA report. The Service sent the SSA report to eight independent peer reviewers and received two responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Florida (Lowland) Loosestrife

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands to list 404 aquatic, riparian, and wetland species, including lowland (Florida) loosestrife, as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding that the petition contained substantial information indicating that listing may be warranted for Florida (lowland) loosestrife. This document constitutes our 12-month finding on the 2010 petition to list Florida loosestrife under the Act.

Summary of Finding

Florida loosestrife is a perennial herb endemic to the subtropical zone of Florida, largely on the western side of the State. The species occurs in seasonally inundated open areas and can tolerate moderate levels of

disturbance. For example, it can be found in roadside ditches and disturbed wetlands along with swamps, marshes, and wet prairies. The species can be very abundant where it occurs, often numbering in the thousands, forming dense mats and dominating the groundcover. Both the historical and current distribution of Florida loosestrife is not fully known. Vouchered counties include Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Hernando, Hillsborough, Lee, Manatee, Okeechobee, Orange, and Sarasota. However, the species has also been documented in Broward and Citrus Counties and reported in Palm Beach County.

Little is known about the life history of Florida loosestrife. It is reported that it flowers year-round, but it likely most reliably flowers in spring. Plants that experience seasonal flooding beginning in late spring to early summer must flower and set seed before they are inundated. Florida loosestrife seeds likely disperse within floodplains via sheet flow. Pollinators are not known.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Florida loosestrife, and we evaluated all relevant factors under the five factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats identified for Florida loosestrife include direct and indirect impacts of development and sea level rise (SLR). The species' range is moderately restricted, occurring in 12 counties and 35 watersheds, with many of the records occurring in the last few years as efforts to locate the species have increased.

Current threats to the species are largely related to habitat conversion associated with urbanization and other development (*e.g.,* agriculture); however, the species continues to occur in urbanized and other developed areas, albeit in highly altered habitats. The species' ability to survive in different settings is reflected in the species' resiliency; as documented in the SSA report, 22 of the 35 units have at least moderate resiliency. Given the apparent resiliency of the plants in developed areas, the high number of units with moderate to very high resiliency, and the species' ability to adapt to disturbed environments, the species is not in danger of extinction throughout all of its range.

Next, we considered whether the Florida loosestrife is likely to become endangered within the foreseeable future throughout all of its range. For the Florida loosestrife, habitat loss and degradation (from urban and agricultural development) and SLR are projected to be the biggest threats to the species in the future. To evaluate the future condition of the species, we developed two plausible future scenarios to project the outcomes of future urban and agricultural development and SLR at two timesteps (2040 and 2070). However, even under higher projected development and SLR scenarios, the species is expected to have sufficient redundancy with several moderate to high resiliency populations distributed across the range of the species. We, therefore, determined that the scale of impacts projected in the future will not affect the species such that it is likely to become an endangered species in the foreseeable future. Thus, after assessing the best available information, we conclude that Florida loosestrife is not in danger of extinction now, or within the foreseeable future throughout all of its range.

We also evaluated whether the Florida loosestrife is endangered or threatened in a significant portion of its range. We did not find any portions of the Florida loosestrife's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion, either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the Florida loosestrife is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that Florida loosestrife is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Florida loosestrife as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Florida loosestrife species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0173 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Florida loosestrife SSA report. The Service sent the SSA report to six independent peer reviewers and received two responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Florida Pinesnake

Previous Federal Actions

On July 11, 2012, the Service was petitioned by the Center for Biological Diversity, Thomas Lovejoy, Kenney Krysko, C. Kenneth Dodd, Jr., Allen Salzberg, Edward O. Wilson, and Michael J. Lannoo to list 53 amphibians and reptiles in the United States, including the Florida pinesnake, as endangered or threatened species under the Act. In response to the petition, on September 18, 2015, the Service published in the **Federal Register** (80 FR 56423) a 90-day finding that the petition contained substantial information indicating the Florida pinesnake may warrant listing. This document constitutes our 12-month finding on the 2012 petition to list the Florida pinesnake under the Act.

Summary of Finding

The Florida pinesnake is a large, non-venomous, diurnal, and highly fossorial constrictor endemic to the Coastal Plains of the southeastern United States. Its recognized range spans from southeastern South Carolina, through central and south Georgia, to south Florida and west into the Florida panhandle and the southern part of Alabama. This subspecies exhibits a strong preference for pine forests with open-canopy, well-drained, sandy soil, and frequent fires. Five main habitat elements that appear to be essential to the survival and reproductive success of individuals are well-drained soils, suitable vegetation structure and composition, low nearby road density, an appropriate fire return interval, and presence of prey. Pinesnakes are active foragers that hunt a variety of prey both above and below ground. As accomplished burrowers, they can tunnel through loose soil, dig nests, and excavate rodents for food. They also use existing underground burrows and tunnels created by other species, such as the southeastern pocket gopher (*Geomys pinetis*), for refugia.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Florida pinesnake, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. Florida

pinesnakes are associated with various actions that are associated with the loss and degradation of habitat. Habitat loss is due to a number of factors, including fire suppression, historical and incompatible silvicultural practices, SLR, conversion of land to agriculture, and urbanization. The current constraints on the ability to manage pine habitat through prescribed fire may be exacerbated by urbanization and climate change in the future. It is possible that several of these factors are acting synergistically to impact the Florida pinesnake.

Although there is still uncertainty surrounding the evaluated stressors and their synergistic effects, habitat loss and modification, due to the effects of both urban development and climate change, were considered in the assessment of Florida pinesnake populations and the subspecies' overall viability. Currently, across the subspecies' range, there are no documented impacts at the population level from invasive species, persecution or increased harassment, overcollection for the pet trade, or disease. While habitat loss and modification are the primary factor influencing the subspecies, many Florida pinesnake populations have moderate to high resiliency in the face of these threats.

It is estimated that Florida pinesnakes have likely lost 30.8 percent (41 of 133 populations) of their historical populations due to loss and degradation of habitat, representing 9 percent of the total occupied range of the subspecies. The remaining 69.2 percent of the populations, covering 90.4 percent of the total historical range, have a greater than 50 percent probability of persisting, and are considered extant as of 2021. Of the extant populations, 71.2 percent of populations (66 populations) covering 93.2 percent of the current occupied range are very likely or extremely likely to persist as of 2021, and they have moderate to high resiliency. Thirty-one and half percent of populations covering 77.1 percent of the current occupied range are considered to have high resiliency. We estimate that all seven representative units have likely lost at least one historic, delineated population. Despite this decrease from the historical number of populations, all representative units have multiple populations, which meets our criteria for high redundancy. Because two representative units do not have populations in the highest persistence category, and those units are on the northern and western portions of the subspecies range, we consider the current representation to be moderate. We, therefore, conclude that the Florida pinesnake is not in danger of extinction throughout all of its range.

In considering the foreseeable future as it relates to the status of the Florida pinesnake, we considered the relevant risk factors (*i.e.,* threats/stressors) affecting the subspecies and whether we could draw reliable predictions about the subspecies' response to these factors. We considered whether we could reliably assess the risk posed by the threats to the subspecies, recognizing that our ability to assess risk is limited by the variable quantity and quality of available data about effects to the Florida pinesnake and its response to those threats.

In the future, land-use change and other anthropogenic activities may impact Florida pinesnake habitat through loss of habitat and fragmentation. Our analysis of two future scenarios until 2080 encompasses the best available information for future projections of levels of urbanization, and it uses two different representative concentration pathways (RCPs) for climate change (*i.e.,* A1B and B2) to look at the effects of SLR and prescribed burn windows. We determined that that timeframe enables us to consider the threats/stressors acting on the subspecies and to draw reliable predictions about the subspecies' response to these threats/stressors.

Loss of habitat and fragmentation threats associated with urbanization and climate change are projected to occur throughout the subspecies' range. The importance of protected lands and managing habitats through burning will continue to play an important role for this subspecies. Given the future scenarios, the resiliency of Florida pinesnake populations are projected to decline in the future. Under both scenarios, in 2040, 30 populations are projected to have moderate or high resiliency, covering 73 percent of the occupied range. Under both scenarios, at 2080, 11 populations are projected to have moderate or high resiliency, covering 62 percent of the occupied range. Subspecies' representation and redundancy are projected to decrease from moderate and high, respectively, in current condition levels to moderate in the future. The number of representative units with populations in moderate and high resiliency are projected to decrease under all scenarios and timesteps. However, the subspecies is projected to maintain broad occurrence across its range even under the projected future threats, with five of seven representation units containing populations of moderate or high resiliency into the future. Although the total number of populations is projected to decline by 2080, 62 percent of the current range of the Florida pinesnake remains occupied by multiple populations with greater than 80 percent probability of persistence (moderate and high resiliency); therefore, the subspecies is projected to have moderate redundancy, providing the subspecies the ability to withstand catastrophic events. These populations cover a large geographic area and maintain high or moderate resiliency due to adequate suitable habitat coverage, high proportion of area within protected areas, sufficient connectivity, and low impact of threats in the future. Thus, after assessing the best available information, we determine that the Florida pinesnake is not in danger of extinction now or likely to become so within the foreseeable future throughout all of its range.

We also evaluated whether the Florida pinesnake is endangered or threatened in a significant portion of its range. We did not find any portions of the Florida pinesnake's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion either now or in the future. Thus, after assessing the best available information, we conclude that the Florida pinesnake is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that the Florida pinesnake is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Florida pinesnake as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Florida pinesnake species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0174 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Florida pinesnake SSA report. The Service sent the SSA report to seven independent peer reviewers and received six responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these

reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Mimic Cavesnail

Previous Federal Actions

On June 25, 2007, the Service received a petition from Forest Guardians (*i.e.,* WildEarth Guardians) requesting that the Service list 475 species, including the mimic cavesnail, as endangered or threatened species and designate critical habitat under the Act. All 475 species occur within the Southwestern Region and were ranked as G1 or G1G2 species by NatureServe at the time. On December 16, 2009, the Service published in the **Federal Register** (74 FR 66866) a partial 90-day finding on the mimic cavesnail and 191 other species, stating that the petition presented substantial scientific information indicating that listing may be warranted for 67 of the 192 species, including the mimic cavesnail. This document constitutes our 12-month finding on the 2007 petition to list the mimic cavesnail under the Act.

Summary of Finding

The mimic cavesnail is a freshwater snail endemic to a deep portion of the karstic Edwards Aquifer in Bexar County, Texas. It is a very small snail, with average shell height of about 1.0 millimeter (mm) (0.04 inch (in)), a thin operculum, and trapezoidal radula. Freshwater gastropods are broadly characterized by rapid growth and short lifespans, which result in high reproduction rates and short rates of population turnover. Species may reproduce a single or multiple generations per year.

The range of the mimic cavesnail is situated at the southwestern extent of the San Antonio-New Braunfels metropolitan area in Bexar County, Texas. The distribution of the mimic cavesnail is dependent upon the availability and connectivity of suitable aquatic subterranean habitat; this habitat has sufficient water quality and quantity within deep karstian spaces. Prior to 1986, the mimic cavesnail was known from only two groundwater wells, O.R. Mitchell (State Well Number 6843601) and Verstraeten Wells (State Well Number 6843607). In 2021, the species was discovered at Aldridge 209 Well (State Well Number 6843802), which is 5 km (3 mi) to the southwest of O.R. Mitchell and Verstraeten Wells. All mimic cavesnail wells occur just to the northwest of the freshwater/saline-water interface.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the mimic cavesnail, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the mimic cavesnail's biological status include mortality from groundwater wells, reductions in groundwater quantity (including reductions via climate change), and groundwater contamination.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that well mortality, groundwater quantity, and groundwater contamination are not currently affecting the mimic cavesnail at the population level. Direct mortality through expulsion from groundwater wells is occurring, but the species' benthic lifestyle, high reproductive rate, and short lifespan result in this mortality being unlikely to affect the population's resiliency. In addition, two of the three wells that ejected mimic cavesnails are inactive, which removes those as sources of mortality for the species. Because it is a benthic species, it is less susceptible to entrainment and expulsion from wells, and species with life-history traits like the mimic cavesnail's are unlikely to be affected by the mortality observed at the groundwater wells where it has been found. Further, groundwater quantity at the depths where mimic cavesnail occurs has not been affected by groundwater withdrawals, and we have no information indicating that will change in the future. Finally, we have no evidence of groundwater contamination at these depths. Thus, we conclude that the mimic cavesnail is not in danger of extinction throughout all of its range.

To assess the future conditions of the mimic cavesnail, we evaluated climate change and land-use projections under only the most plausible future scenario from 2022 to 2100. No new wells have been drilled in the immediate area analysis unit since 1995. We assume that this trend will continue and be accompanied by an increase in the capping or plugging of older groundwater wells. We expect that well mortality will decline through 2100.

In the future, the area surrounding mimic cavesnail habitat is projected to have increased human population growth and exurban and suburban development; increased demands for water; and a warming, more drought-prone climate. Climate change will also impact the area, with increasing average and extreme temperatures, but no substantial change in precipitation is expected.With little change in rainfall and increased temperatures, evapotranspiration could increase reducing surface run-off and ultimately aquifer recharge. During drought years, recharge could be reduced by 21–33 percent, and flows at Comal Springs could decrease by 10–24 percent, which would initiate groundwater withdrawal reductions under current State and local regulations. We project that climate change will result in less groundwater extraction from the Edwards Aquifer given existing regulations to protect species listed under the Act in the Comal and San Marcos Springs Systems, as well as limit water withdrawals from the Edwards Aquifer. We would also expect less dependence on groundwater in the future due to ongoing and planned efforts to conserve and augment water resources in the San Antonio-New Braunfels metropolitan area. Given this and historically small declines in water levels, we expect that aquifer levels would not decline and cavesnail habitat would be maintained.

The potential for groundwater contamination in the San Antonio segment will continue into the future. New contaminant sources are expected to be added to the region with increased human populations and expanded development; many existing contaminant sources will persist. There is an ongoing effort by the City of San Antonio to protect sensitive areas of the contributing and recharge zones in Bexar, Medina, and Uvalde Counties. Existing protected lands will potentially aid in reducing transport of contaminants to the San Antonio segment. The mimic cavesnail is also somewhat buffered from the immediate effects of contaminants at least in the near-term future. Deeper portions of that aquifer segment have historically been less impacted by contaminants, but that could change over several decades with increasing urbanization. Furthermore, the San Antonio segment has a great capacity to assimilate and dilute contaminants due to the massive volumes of water transported through the aquifer. The best available information does not allow us to determine whether contaminants would ever reach concentrations that would impair mimic cavesnail habitat. Thus, after assessing the best available information, we conclude that the mimic cavesnail is not likely to become endangered within the foreseeable future throughout all of its range.

We also evaluated whether the mimic cavesnail is endangered or threatened in a significant portion of its range. We did not find any portions of the mimic

cavesnail's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion either now or in the foreseeable future. Thus, after assessing the best available information, we conclude that the mimic cavesnail is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that mimic cavesnail is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the mimic cavesnail as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the mimic cavesnail species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0175 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the mimic cavesnail SSA report. The Service sent the SSA report to five independent peer reviewers and received two responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Northern Cavefish

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the northern cavefish, as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding that the petition contained substantial information indicating listing may be warranted for the northern cavefish. This document constitutes our 12-month finding on the 2010 petition to list the northern cavefish under the Act.

Summary of Finding

Native to central Kentucky, the northern cavefish is a small, cave-dwelling fish found only in subterranean drainages. It is characterized by its rudimentary eyes; lack of skin pigment; large, flat head; and tubular, non-streamlined body. The standard length (tip of nose to end of last vertebra) of adult northern cavefish ranges from approximately 60 to 80 mm (2.4 to 3.1 in). The maximum known age for northern cavefish is 10 years, but the lifespan may be 20 to 40 years. The species has four life stages: egg, protolarva, juvenile, and adult. Eggs and protolarvae are held in the female's gill chamber until reaching the juvenile stage, when they swim freely apart from the mother. Age at reproductive maturity (adulthood) is around 6 years.

Northern cavefish occur in subterranean streams in Meade, Breckinridge, Hardin, Hart, and Edmonson Counties, Kentucky, south of the Ohio River. In Kentucky, this area is characterized as a karst ecosystem with underground drainage systems comprised of sinkholes and caves. The closely related Hoosier cavefish (*Amblyopsis hoosieri*) is restricted to Indiana north of the Ohio River. Formerly, the Hoosier cavefish was recognized as the northern cavefish, but the Hoosier cavefish is now known to be a distinct taxon based on morphological and genetic differences. Because northern cavefish inhabit underground stream networks that cannot be mapped or surveyed, the species likely occurs at sites that are inaccessible, and the true distribution and number of populations within the range of the northern cavefish is unknown.

Individuals of all northern cavefish life stages need generally cool water temperatures, sufficient dissolved oxygen, low salinity, and flowing water. The species needs slow-flowing pools or shoals, a food supply of invertebrates (may occasionally consume other northern cavefish), and substrates composed of fine particles. Floods are important for juveniles and adults as they provide detritus and food resources. At the population level, floods are important for reproduction (renewing generations) and maintaining connectivity, likely allowing passive transport between sites.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern cavefish, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the northern cavefish's biological status include water pollution, agriculture and forest loss, municipal and industrial development, and impoundment of surface waters.

Historically, there were at least six metapopulations (single population with subpopulations at different sites and some connectivity between sites) of northern cavefish. Two of those populations have no records since the 1990s and cannot be confirmed to be extant or extirpated. Based on occurrence records since 2000, the other four northern cavefish metapopulations are known to remain extant in two representation units. The representation units are separated by the Rough Creek Fault Zone, which is likely a barrier to cavefish dispersal. Population resiliency was not directly assessed; however, the number of individuals encountered during surveys of most sites is 20 or fewer, but some sites (subpopulations) have documented hundreds of northern cavefish.

Northern cavefish may be negatively impacted by groundwater contamination via storm runoff or intentional disposal of wastes in sinkholes, which are a predominant landscape feature in the species' range. While there is risk of a spill or surface release of contaminants to groundwater, there have been no documented cases of northern cavefish being harmed by such an event. In addition, it is unlikely contamination events would affect all populations, as the two representation units are separated by a fault zone barrier. Further, there is redundancy of subpopulations within at least two of the four known extant metapopulations (at least one metapopulation in each representation unit has multiple populations). Because there is redundancy of subpopulations within three of the four known, extant metapopulations (at least one metapopulation in each representation unit has multiple subpopulations) there are multiple populations distributed across a wide area (which buffers the impacts of adverse events), the current risk of extinction is low. Therefore, we find that the species is not in danger of extinction throughout all of its range.

Our future conditions analysis for the northern cavefish used projections of land uses and climate to assess potential groundwater contamination and changes in stream discharge and water temperature, respectively, to 30- and 50-year time horizons. It is reasonable to rely on these time horizons because they correspond to the range of available urbanization and land use change model forecasts. Furthermore, approximately

30 and 50 years represent timeframes for the species to respond to potential changes on the landscape. Two scenarios were projected, one under which human population growth and economic development is slow, and another under which such growth and development is more rapid. Climate in the species' range is expected to be warmer and wetter, but is unlikely to be a major threat to the species at the time horizons considered in our analysis. Likewise, under both scenarios and time horizons, the portion of developed land is expected to change very little. Given the projected small changes in threats and land use to 2070, we expect the northern cavefish will maintain species' redundancy and representation similar to current levels. In addition, the best scientific information indicates the species' population conditions have not substantially changed over time and are not expected to change within the foreseeable future given the projected lack of change in land uses and threats. Thus, after assessing the best available information, we conclude that the northern cavefish is not likely to become an endangered species within the foreseeable future throughout all of its range.

We also evaluated whether the northern cavefish is endangered or threatened in a significant portion of its range. We did not find any portions of the northern cavefish's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the northern cavefish is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that northern cavefish is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the northern cavefish as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the northern cavefish species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0176 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the northern cavefish SSA report. The Service sent the SSA report to seven independent peer reviewers and received no responses. Although we received no peer review responses, we received input from species experts during development of the SSA, which is incorporated into and cited in the SSA report. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Smallscale Darter

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands to list 404 aquatic, riparian, and wetland species, including the smallscale darter, as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a 90-day finding that the petition contained substantial information indicating listing may be warranted for the smallscale darter. This document constitutes our 12-month finding on the 2010 petition to list the smallscale darter under the Act.

Summary of Finding

The smallscale darter is a member of the Class Actinopterygii (ray-finned fishes), Order Perciformes, Family Percidae (perches), in the subfamily Etheostomatinae (darters). This midsized darter reaches a maximum length of 93 mm (3.6 in). The species is native to the Stones River, Harpeth River, Red River, and Little River tributaries of the Cumberland River System in Kentucky and Tennessee. The Harpeth River and Stones River populations are in the greater Nashville area of Tennessee, while the Little River population is in Kentucky. The Red River population straddles the border of Kentucky and Tennessee. The smallscale darter is extant throughout its historical range.

Stream reaches occupied by smallscale darters tend to have stable banks, intact riparian areas, and clean cobble and boulder substrate. These stream characteristics support the reproduction of smallscale darters, in which females attach eggs under a rock, and males protect the eggs until they hatch. Juveniles may inhabit areas where the current is slower, water is shallower, and substrate is finer than areas inhabited by adults. At the microhabitat level, smallscale darters use deeper and faster flowing parts of riffles than other darters in the species' range.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the smallscale darter, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the smallscale darter's biological status include habitat destruction and degradation resulting from urbanization, agricultural land use, impoundments, and impaired water quality. We concluded in our analyses that impacts of isolated populations and climate change are not likely to negatively influence the species' viability. The smallscale darter is present throughout its historical range in four populations exhibiting moderate to moderate-high resiliency. This moderate to moderate-high resiliency of smallscale darter populations, combined with the species' presence throughout its historical area, provides moderate redundancy and representation rangewide. Given the moderate to moderate-high resiliency populations distributed across the historical range, the species is not currently in danger of extinction throughout its range. Thus, we find that the species is not in danger of extinction throughout all of its range.

The smallscale darter is expected to maintain at least moderate resiliency across its range for the foreseeable future in all but one scenario for one population. For the smallscale darter, we identified the foreseeable future as 30 years, the time period for which we could reliably predict both relevant land cover change and the species' response to these changes. In all three future scenarios, we project the species to be extant in the entirety of its known range, with moderate resiliency for all populations in two of the three scenarios. We determined that the magnitude and scale of impacts projected in the future will not impact the species such that it is likely to become an endangered species within the foreseeable future. Thus, after assessing the best available information, we conclude that the smallscale darter is not likely to become an endangered species within the foreseeable future throughout all of its range.

We also evaluated whether the smallscale darter is endangered or threatened in a significant portion of its range. We did not find any portions of the smallscale darter's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the smallscale darter is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that smallscale darter is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the smallscale darter as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the smallscale darter species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0177 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the smallscale darter SSA report. The Service sent the SSA report to five independent peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.regulations.gov*. We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Texas Troglobitic Water Slater

Previous Federal Actions

On June 25, 2007, the Service received a petition from Forest Guardians (*i.e.,* WildEarth Guardians) requesting that the Service list 475 species, including the Texas troglobitic water slater, as endangered or threatened species and designate critical habitat under the Act. All 475 species occur within the Southwestern Region and were ranked as G1 or G1G2 species by NatureServe at the time. On December 16, 2009, the Service published in the **Federal Register** (74 FR 66866) a partial 90-day finding on the Texas troglobitic water slater and 191 other species, stating that the petition presented substantial scientific information indicating that listing may be warranted for 67 of the 192 species, including the Texas troglobitic water slater. This document constitutes our 12-month finding on the 2007 petition to list the Texas troglobitic water slater under the Act.

Summary of Finding

The Texas troglobitic water slater is a small, aquatic subterranean crustacean located in the artesian zone of the southern segment (also referred to as the San Antonio segment) of the Edwards Aquifer in Hays County, Texas. Texas troglobitic water slaters are expelled from the artesian zone of the Edwards Aquifer through artesian wells and springs. Because of its primarily non-photosynthetic diet and high well mortality relative to other collected subterranean taxa (which may indicate a longer distance traveled to the surface), the Texas troglobitic water slater likely occupies depths somewhere between 60 m (197 ft) and 152 m (498 ft) below the surface. This species of water slater has been collected from three discharge sites: the San Marcos artesian well, Diversion Spring, and the training area well. These sites are all within 600 m (2,000 ft) of each other and in close proximity (less than approximately 100 m (330 ft)) to the freshwater/saline-water zone of the Edwards Aquifer.

The Texas troglobitic water slater lives in water-filled voids within the aquifer, although the species has never been directly observed in its natural subterranean habitat and, thus, its specific habitat preferences are not known. Observations of congeneric species indicate the capacity for high rates of reproduction and benthic (crawling) movement of the species. Stable isotope data suggest the Texas troglobitic water slater is relatively low on the food web, serving as a benthic forager and/or scraper. The primary type of food consumed by the Texas troglobitic water slater is produced at the freshwater/saline-water interface, which likely necessitates that the species lives within close proximity to this interface.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Texas troglobitic water slater, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the Texas troglobitic water slater's biological status include reductions in water quantity through groundwater pumping and development, reductions in water quality, the effects of climate change, and mortality from groundwater wells.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that the best available information does not indicate direct negative effects from environmental or anthropogenic factors to the Texas troglobitic water slater population, nor is there evidence indicating a change to demographic factors from historical levels. The primary driving factors of Texas troglobitic water slater viability are water quantity (*e.g.,* groundwater pumping and development) and water quality (*e.g.,* development and impervious cover). The Texas troglobitic water slater has survived significant drought periods (including the drought of record from the late 1940s to mid-1950s) and despite the examined factors, the population has maintained resiliency for more than a century. Additionally, the best available information does not indicate that any groundwater contamination is affecting the species. Finally, direct mortality through expulsion from groundwater wells is occurring, but the species' benthic lifestyle and likely high reproductive rate result in this level of mortality being unlikely to affect the population's current resiliency.

Our two plausible future scenarios for the species use projections out to 2050 and 2100. The primary factors driving the Texas troglobitic water slater population's future viability are water quantity and water quality. Increases in development lead to increases in impervious cover, altered recharge rates, and degraded water quality. The lands directly above Texas troglobitic water slater habitat are categorized as developed, and all anthropogenic factors already exist and will continue to influence the species' viability into the future. Projected land-use changes occurring over the recharge zone will also inhibit opportunities for surface water to enter the aquifer and for enough discharging water to effectively clear anthropogenic contaminants. Longer residence times of contaminants in groundwater and lack of photodegradation of constituents in the aquifer are not well understood, and it is uncertain how these changes will affect the Texas troglobitic water slater population into the future. There is no information assessing the environmental tolerance of the Texas troglobitic water slater or how degradation in water

quality can affect the species. Likewise, at this time, there are no appropriate isopod surrogates occupying a similar habitat with more information from which we could extrapolate for the Texas troglobitic water slater.

While climate change and other anthropogenic influences (*e.g.,* vegetation removal and urbanization) cause the surface to warm, a lag in increased groundwater temperature may occur. For ectothermic animals like the Texas troglobitic water slater, overall vulnerability to climate change will depend on thermal sensitivity and how quickly the buffered environment changes, and we do not have this information to inform our future scenarios. The southern segment of the Edwards Aquifer has a great capacity to assimilate and dilute contaminants as massive volumes of water transport these materials through the aquifer. However, contaminants in groundwater can be diluted over distance and time and flushed through discharge points more frequently than older groundwater at a greater depth. We have no information indicating whether contaminants would ever reach concentrations that would impair or kill Texas troglobitic water slaters in either scenario.

Current water planning does not account for climate change, although climate change will be considered in the upcoming Edwards Aquifer Habitat Conservation Plan (HCP). There remains a possibility that current State and local regulations on groundwater use may not be enough to maintain aquifer levels and springflows if conditions become worse than the drought of record. The Edwards Aquifer Authority is committed to improving their HCP, and funding was allocated to predict droughts and climate change impacts on the aquifer. Land in Hays County over the recharge zone was purchased or protected through easements, and partners are committed to purchasing more land in the future, in addition to implementing other conservation efforts. If current management of the southern segment of the Edwards Aquifer continues into the future, aquifer levels should not decline to a level where Texas troglobitic water slater habitat would not be maintained.

For both the lower and upper plausible future scenarios, the best available information does not project a negative impact from environmental or anthropogenic factors directly to the known Texas troglobitic water slater population at the depth at which they occur, nor is there evidence indicating a negative change to demographic factors historically. We expect that under both future scenarios, resiliency, redundancy, and representation of the species will be maintained into the foreseeable future. Neither future scenario projections point to evidence indicating any threat to the Texas troglobitic water slater population under current groundwater management implementation, which we anticipate will continue into the future. Thus, after assessing the best available information, we conclude that the Texas troglobitic water slater is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range.

We also evaluated whether the Texas troglobitic water slater is endangered or threatened in a significant portion of its range. We did not find any portions of the Texas troglobitic water slater's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion either now or in the foreseeable future. Thus, after assessing the best available information, we conclude that the Texas troglobitic water slater is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that Texas troglobitic water slater is not in danger of extinction or likely to become in danger of extinction within the foreseeable future throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Texas troglobitic water slater as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Texas troglobitic water slater species assessment form and other supporting documents on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0178 (see **ADDRESSES**, above).

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Texas troglobitic water slater SSA report. The Service sent the SSA report to three independent peer reviewers and received two responses. Results of this structured peer review process can be found at *https://www.regulations.gov.* We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Edison's ascyrum, Florida (lowland) loosestrife, Florida pinesnake, mimic cavesnail, northern cavefish, smallscale darter, or Texas troglobitic water slater to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References

A complete list of the references used in these petition findings is available in the relevant species assessment form, which is available on the internet at *https://www.regulations.gov* in the appropriate docket (see **ADDRESSES**, above) and upon request from the appropriate person (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–25586 Filed 11–28–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 228
Wednesday, November 29, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 29, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Pandemic Electronic Benefit Transfer (P–EBT).

OMB Control Number: 0584–0660.

Summary of Collection: This is a revision of the currently approved information collection for activities related to the Pandemic Electronic Benefit Transfer (P–EBT). The P–EBT is part of the U.S. Government response to the COVID–19 pandemic. The Families First Coronavirus Response Act of 2020 (as amended by the Consolidated Appropriations Act 2021 the American Rescue Plan Act of 2021, and the Consolidated Appropriations Act 2023 provides the Secretary of Agriculture authority to administer, through State agencies, the PEBT programs.

States are required to submit an operational plan to FNS Regional Office for approval. With the expiration of the COVID–19 public health emergency (PHE) on May 11, 2023, States will not receive approval for operational plans submitted after Federal fiscal year (FY) 2023 (*i.e.,* September 30, 2023), although States may issue some benefits retroactively to households after September 30, 2023, based on prior plan approvals. However, FNS proposes an extension for limited elements of the currently approved information collection to facilitate the orderly wind-down and close-out of the P–EBT program.

Need and Use of the Information: This information collection is necessary to determine eligibility and benefit levels for P–EBT. The information collected will used to determine the benefit levels children are eligible to receive, which will vary depending on the FY of the approved plan. Additionally, during the summer months all children eligible for free or reduced price meals that are enrolled in schools that participate in the National School Lunch Program are considered eligible for P–EBT. This requires all schools to provide the State agency with a list of children who have been determined eligible for free and reduced price meals.

FNS will provide funding to each State's SNAP State agency for 100% of P–EBT-related school level administrative costs. Such funding will be available for the necessary, allowable, and reasonable State agency costs associated with the administration of P–EBT incurred during FY 2020–2023. In order to receive this funding, schools must report to their State agency on the school level costs incurred to administer P–EBT.

Description of Respondents: State agencies, private sector (business-not-for profit), individuals and households.

Number of Respondents: 114,337.

Frequency of Responses: Annually.

Total Burden Hours: 20,087.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–26219 Filed 11–28–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0070]

Addition of Singapore to the List of Regions Affected by African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Singapore to the Animal and Plant Health Inspection Service (APHIS) list maintained on the APHIS website of regions considered to be affected with African swine fever (ASF). We have taken this action because of the confirmation of ASF in Singapore.

DATES: Singapore was added to the APHIS list of regions considered affected with ASF effective February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Amber Kerk, Staff Officer, Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, APHIS, 920 Main Campus Drive, Venture II, 3rd Floor, Raleigh, NC 27606; phone: (608) 662–0625; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a

highly contagious disease of wild and domestic swine that can spread rapidly with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region or having reason to believe the disease exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (WOAH),[1] or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On February 9, 2023, the veterinary authorities of Singapore reported to WOAH the occurrence of ASF in that country. In response to that report, on February 16, 2023, APHIS added Singapore to the list of regions where ASF exists or the Administrator has reason to believe that ASF exists, in compliance with § 94.8(a)(3). This notice serves as an official record and public notification of that action.

As a result, pork and pork products from Singapore, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 24th day of November 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–26234 Filed 11–28–23; 8:45 am]

BILLING CODE 3410–34–P

[1] The World Organization for Animal Health internationally follows a British English spelling of ''organisation'' in its name; also, it was formerly the Office International des Epizooties, or OIE, but on May 28, 2022, the Organization announced that the acronym was changed from OIE to WOAH.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0047]

Addition of Bolivia to the List of Regions Affected With Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we added Bolivia to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with highly pathogenic avian influenza (HPAI). This action follows our imposition of HPAI-related restrictions on the importation of avian commodities originating from or transiting Bolivia as a result of the confirmation of HPAI in that country.

DATES: Bolivia was added to the list of regions APHIS considers to be affected with HPAI, effective on February 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. La'Toya Lane, Regionalization Evaluation Services, Strategy and Policy, VS, 4700 River Road, Riverdale, MD 20737; phone: (301) 550–1671; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including Newcastle disease and highly pathogenic avian influenza (HPAI). The regulations prohibit or restrict the importation of live poultry, poultry meat, and other poultry products from regions where these diseases are considered to exist.

Section 94.6 of the regulations contains requirements governing the importation into the United States of carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions of the world where HPAI exists or is reasonably believed to exist. HPAI is an extremely infectious and potentially fatal form of avian influenza in birds and poultry that, once established, can spread rapidly from flock to flock. The Animal and Plant Health Inspection Service (APHIS) maintains a list of restricted regions it considers to be affected with HPAI of any subtype on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.*

APHIS receives notice of HPAI outbreaks from veterinary officials of the exporting country, from the World Organization for Animal Health (WOAH) [1] or from other sources the Administrator determines to be reliable.

On January 31, 2023, the veterinary authorities of Bolivia reported to WOAH an HPAI occurrence in that country. On February 2, 2023, after confirming that HPAI occurred in commercial birds or poultry, APHIS added Bolivia to the list of regions where HPAI exists. On that same day, APHIS issued an import alert notifying stakeholders that APHIS imposed restrictions on the importation of poultry, commercial birds, ratites, avian hatching eggs, unprocessed avian products and byproducts, and certain fresh poultry commodities from Bolivia to mitigate risk of HPAI introduction into the United States.

With the publication of this notice, we are informing the public that we added Bolivia to the list of regions APHIS considers to be affected with HPAI of any subtype, effective February 2, 2023. This notice serves as an official record and public notification of this action.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

[1] The World Organization for Animal Health internationally follows a British English spelling of ''organization'' in its name; also, it was formerly the Office International des Epizooties, or OIE, but on May 28, 2022, the Organization announced that the acronym was changed from OIE to WOAH.

Done in Washington, DC, this 24th day of November 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–26228 Filed 11–28–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

[Docket Number: 231121–0276]

Business Diversity Principles

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice; request for information.

SUMMARY: The Department of Commerce is seeking public input on the draft Business Diversity Principles (BDP), which describe best practices related to diversity, equity, inclusion, and accessibility (DEIA) in the private sector, and on the impact of DEIA initiatives.

DATES: Comments must be received by January 5, 2024.

ADDRESSES: To respond to this Request for Information (RFI), please submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter DOC–2023–0003 in the search field,

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

FOR FURTHER INFORMATION CONTACT: Brandee Anderson, Senior Advisor to the Deputy Secretary, at 202–880–4006 or *banderson@doc.gov.* Please direct media inquiries to Valerie Keys in the Office of Public Affairs at 202–802–8166 or *vkeys@doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2021, President Biden signed Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government. On February 16, 2023, President Biden signed Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities through the Federal Government. Under these Executive Orders, the Biden-Harris Administration outlined an ''ambitious, whole-of-government approach to racial equity and support for underserved communities'' that ''continuously embed[s] equity into all aspects of Federal decision-making.'' Additionally, E.O. 14091 declared that ''the Federal Government shall continue to pursue ambitious goals to build a strong, fair, and inclusive workforce and economy'' and ''invest in communities where Federal policies have historically impeded equal opportunity—both rural and urban—in ways that mitigate economic displacement, expand access to capital . . . and build community wealth.'' Equitable participation in our Nation's economy provides a path to economic prosperity and intergenerational wealth for Americans in underserved communities and ensures that the economy benefits from the talent and potential across the country. The Department of Commerce is committed to implementing Executive Orders 13985 and 14091 and is developing the Business Diversity Principles (BDP) Initiative as part of its 2022–2026 Strategic Plan goal of promoting inclusive capitalism and equitable economic growth for all Americans. The BDP Initiative aims to foster a more equitable economic landscape by encouraging businesses to learn from each other's successes and adopt best practices and strategies that help promote economic growth in underserved communities through diversity, equity, inclusion, and accessibility (DEIA) initiatives. This Initiative seeks to recognize the range of private sector efforts that focus on DEIA, including but not limited to human resources, workforce development and supplier diversity efforts. In recognition of the wide array of terms used to describe these efforts, the Department will collectively refer to these private sector initiatives that seek to advance equitable economic development under the umbrella term ''Business Diversity.''

Research shows that these initiatives are essential to the competitiveness of the Nation's businesses and overall American economy.[1] The Business Diversity Principles Initiative is an opportunity for the Department to: (i) advance equity and support for underserved communities, and (ii) invest in the Nation's infrastructure, emerging and critical technology fields, and workforce development. The Department of Commerce's mission is to create the conditions for economic growth and opportunity for all communities. The Business Diversity Principles advance this mission by enabling the private sector to gain cross-industry insights, expand existing efforts, and embed Business Diversity across their business operations.

The Initiative seeks to help private sector institutions build on their commitments to equity and economic development by providing a set of best practices (the ''Business Diversity Principles'') and other tools for operationalizing Business Diversity. The Department of Commerce intends for the Business Diversity Principles to serve as the first step in a longer term effort to convene private sector Business Diversity leaders, amplify existing efforts, and inspire additional, voluntary Business Diversity efforts. In addition to developing the Business Diversity Principles, this RFI will help the Department shape the next phase of the Initiative, which may include other public engagement opportunities.

Goals of This Request for Information

This RFI invites the public to inform the content of the Business Diversity Principles, share success stories and best practices related to Business Diversity, and comment on the impact of DEIA initiatives. Comments are invited from all interested parties, including private sector employers, workers, Business Diversity subject matter experts, educational leaders, civil rights advocates, and any other relevant stakeholders. The goal of this RFI is to gather input that will be used to refine the Business Diversity Principles and refine the next phases of the Initiative, and develop resources to help the private sector bolster, enhance and expand its Business Diversity efforts.

The Department of Commerce seeks input on the below draft Business Diversity Principles as well as the impact of Business Diversity initiatives.

- *Feedback on Draft Business Diversity Principles*—The Department developed the draft Principles based on input from the private sector and subject matter experts, in addition to secondary research on private sector best practices related to Business Diversity. The draft Principles center on the following six pillars: (1) executive leadership, (2) organizational strategy, (3) workforce development, (4) human resources, (5) community investment, and (6) business opportunities. The Department is interested in hearing from members of the public on the draft Principles.
- *Existing Business Diversity Efforts*—The Nation's economic competitiveness depends on a highly skilled, diverse workforce capable of meeting companies' current and future needs. Private sector Business Diversity efforts seek to ensure that all workers, suppliers, and communities are

[1] McKinsey & Company, ''Diversity Wins: How Inclusion Matters,'' (May 19, 2020), *https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters.*

included in the organization's economic prosperity. The Department is interested in hearing from members of the public and the business community on existing Business Diversity efforts, including real world examples of strategies and best practices relating to the Business Diversity Principles.

Business Diversity Principles

Each of the following six principles presents a set of strategies and objectives aimed at promoting equity and economic development. These principles function as an organizational framework for best practices and offer clear actions that institutions can take to drive equity, innovation, and economic growth.

Executive Leadership: Strive for diverse c-suites and corporate boards by developing clear strategies to increase diversity among the organization's executive ranks. Understand and break down barriers to executive roles for internal and external candidates. Ensure leaders model equitable and inclusive behavior and possess key competencies, such as empathy, cultural competence, and inclusive leadership. Ensure leaders have the necessary resources to drive business diversity efforts, such as toolkits, research, and access to DEIA professionals. Recognize leaders' commitment to Business Diversity and hold them accountable through performance evaluations and compensation.

Organizational Strategy: Use comprehensive assessments to evaluate the current state of Business Diversity within the organization, including demographic data across all levels and departments, company policies, practices, and workers' perceptions. Develop and maintain DEIA councils, which oversee the implementation of Business Diversity initiatives and ensure alignment with overall company objectives. Regularly share progress updates to promote transparency and accountability.

Workforce Development: Cultivate and maintain a diverse talent pipeline by partnering with educational institutions and community organizations and allocating resources for workforce development initiatives and accommodations. Remove barriers to entry, using demographic data to understand workforce composition, identify gaps, and shape organizational strategy. Equip workers, including those from underserved communities, with the necessary skills for advancement.

Human Resources: Prioritize the promotion of internal talent, regularly review promotion data to identify barriers, provide senior leader sponsors for workers from underserved communities. Establish and maintain employee resource groups for workers from underserved communities. Clearly communicate potential internal career paths and advancement opportunities. Foster work-life balance through HR policies, such as flexible working arrangements, comprehensive parental leave, support for caregivers, and inclusive benefits packages.

Business Opportunities: Create an inclusive supply chain that expands opportunities for entrepreneurs from underserved communities at all levels, from food service to construction to financial and consulting services. Invest in mentorship and training programs that help companies navigate industry challenges, build capacity for procurement opportunities, and enhance skill sets. Facilitate access to capital for companies through strategic partnerships and other innovative approaches. Provide networking opportunities for entrepreneurs from underserved communities and encourage recognized certifications to enhance visibility and credibility. Implement inclusive request for proposal processes that eliminate barriers and ensure transparency and accountability.

Community Investment: Invest in capacity building and innovation within communities and ensure the organization's community investment initiatives are accessible to all and promote economic mobility. Use scholarships, incubator programs, and other community-based initiatives to break down barriers and expand opportunities for people from underserved communities to access employment and business opportunities. Understand the organization's target communities' needs and barriers to access. Set measurable goals to track the success of these initiatives.

Public Meetings

The Department may hold future workshops to explore in more detail questions raised in the RFI. Notice and details about any potential future workshop dates and registration deadlines will be announced at *www.commerce.gov.*

Details About Responses to This Request for Information

When addressing the topics below, commenters may describe the practices of their organization or a group of organizations with which they are familiar. If desired, commenters may provide information to describe programs and organizations, including information about type, general demographics, size, and location. The provision of such information is optional and will not affect the Department's full consideration of the comment.

All relevant comments received in response to the RFI will be made publicly available on *www.regulations.gov.* Comments containing references, studies, research, and other empirical data that are not widely published should include electronic copies of the referenced materials. All submissions, including attachments and other supporting materials, will become part of the public record and will be subject to public disclosure. Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Notwithstanding the foregoing, submissions labeled as confidential business information, or otherwise sensitive or protected information may be submitted and will not be subject to public disclosure. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Specific Requests for Information

The following statements and questions cover the major topic areas about which the Department seeks comment. They are not intended to limit the topics that may be addressed. Responses may include any topic believed to inform U.S. Government efforts to bolster, enhance, and expand private sector Business Diversity efforts that drive economic growth, regardless of whether the topic is included in this document.

This is a general solicitation of comments from the public. Respondents are encouraged to respond to *any or all* of the following questions and topic areas and may address related topics. Please identify the questions or topic areas each of your comments address. Responses may include estimates, if applicable. Please indicate where the response is an estimate. Respondents may organize their submissions in response to this RFI in any manner.

The Department is requesting information related to the following topics:

Feedback on Draft Business Diversity Principles

1. Please provide your feedback on the Business Diversity Principles. Do you have recommendations for revising these Principles?

2. How can these principles be improved or clarified to better promote

Business Diversity in the private sector? Are any best practices missing, in your view?

3. Are there any specific elements of the Business Diversity Principles that you would consider especially important?

Existing Business Diversity Efforts

1. To what extent are each of the Business Diversity Principles aligned with your organization's current practices? Which of the Principles represent the greatest growth opportunity for your organization or private sector organizations overall?

2. Please share specific examples of successful Business Diversity initiatives.

3. Please describe any strategies that have been effective in promoting Business Diversity in your organization or industry.

4. Are there specific challenges or obstacles that organizations frequently encounter when implementing Business Diversity initiatives? How can these be overcome?

5. Do Business Diversity initiatives make your business more likely to succeed commercially? How?

6. Do Business Diversity initiatives create value and encourage growth for your business? How?

7. Would the cessation of Business Diversity initiatives harm your business? How?

8. Does your industry have a history of exclusion, discrimination, or inaccessibility to any group of actual or potential employees, executives, business partners, customers, or other stakeholders? If so, do Business Diversity initiatives help your business and/or industry remedy the continuing effects of that exclusion, discrimination, or inaccessibility? How?

9. Does the success of your business and/or industry enhance the national and/or economic security of the United States? If so, do Business Diversity initiatives contribute to your ability to advance that national interest? How?

10. Can the impacts discussed in response to the above questions be quantified or otherwise measured? How? To the extent available, please provide data demonstrating those impacts.

11. What role do you believe the government should play in promoting Business Diversity within the private sector?

12. How can the Department of Commerce and other federal agencies support private sector Business Diversity efforts? What would be the most important outcome from this effort?

13. How might the Business Diversity Principles help you in your day-to-day operations? For example, might the Principles inform your investment decisions, or purchasing decisions, advocacy focus, the type of organization you would want to work for, or how you would allocate business resources toward making a positive impact?

The Department of Commerce appreciates your valuable input and looks forward to reviewing your submissions.

Dated: November 24, 2023.

Brandee Anderson,

Senior Advisor for Diversity, Equity, Inclusion, and Accessibility.

[FR Doc. 2023–26254 Filed 11–27–23; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–871]

Boltless Steel Shelving Units Prepackaged for Sale From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that boltless steel shelving units prepackaged for sale (boltless steel shelving) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 19, 2023.[1] On September 14, 2023, Commerce postponed the preliminary determination of this investigation until November 21, 2023.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is boltless steel shelving from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 32188 (May 19, 2023) (Initiation Notice).

[2] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 63063 (September 14, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from Taiwan'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 32189.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated November 13, 2023 (Preliminary Scope Decision Memorandum).

Decision Memorandum, Commerce established deadlines for parties to submit scope case and rebuttal briefs as well as a deadline to request a hearing on issues raised in the scope briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act.

Furthermore, pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, Commerce preliminarily determined Jin Yi Sheng Industrial Co., Ltd. (Jin Yi Sheng)'s margin on the basis of facts available with adverse inferences. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be 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 under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Jin Yi Sheng. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Taiwan Shin Yeh Enterprise Co., Ltd. (Shin Yeh). Consequently, the rate calculated for Shin Yeh is also assigned as the rate for all other producers and exporters.

Preliminary Determination

For the period April 1, 2022, through March 31, 2023, Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Taiwan Shin Yeh Enterprise Co., Ltd	9.41
Jin Yi Sheng Industrial Co., Ltd	*78.12
All Others	9.41

*Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with this preliminary determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[7] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[8]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[9] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[10]

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

[7] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[8] *See* 19 351.309(c)(2) and (d)(2).

[9] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[10] *See APO and Service Final Rule.*

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration. On November 3, 2023, pursuant to 19 CFR 351.210(e), Edsal Manufacturing Co., Inc. (the petitioner), requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[11]

On November 7, 2023, pursuant to 19 CFR 351.210(e), Shin Yeh also requested that Commerce postpone the final determination, in the event the preliminary determination is affirmative and that provisional measures be extended to a period not to exceed six months. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Application of Facts Available
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2023–26229 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–911]

Thermal Paper From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the sole producer/exporter subject to this administrative

[11] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated November 3, 2023.

review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) May 12, 2022, through October 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2021, Commerce published in the **Federal Register** the antidumping duty order on thermal paper from the Republic of Korea (Korea).[1] On November 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.[2] On January 3, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering one company, Hansol Paper Company (Hansol).[3] On June 27, 2023, we extended the preliminary results of this review to no later than November 21, 2023.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5]

Scope of the Order

The merchandise subject to the *Order* is thermal paper from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV 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 the topics included in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin exists for the period May 12, 2021, through October 31, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
Hansol Paper Company	2.09

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), because Hansol reported the entered value for all of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either Hansol's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Hansol for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, 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.[6]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.19 percent, the all-others rate established in the LTFV investigation.[7] These cash deposit

[1] *See Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders,* 86 FR 66284 (November 22, 2021) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 65750 (November 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023).

[4] *See* Memorandum, ''Extension of Deadline for the Preliminary Results of the 2021–2022 Antidumping Administrative Review,'' dated June 27, 2023.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of 2021–2022 Administrative Review of the Antidumping Duty Order on Thermal Paper from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[7] *See Order,* 86 FR at 66286.

requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties within five days after the date of publication of this notice.[8] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce 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 five days after the date for filing case briefs.[9] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the Issues and Decision Memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS.[12] An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[13]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance via ACCESS.[14] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs.[15] If a request for a hearing is made, parties will be notified of the time and date for the hearing.[16]

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

Notification to Importers

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

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Recommendation

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[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[10] *See* 19 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[12] *See* 19 CFR 351.303.

[13] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310.

[16] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–824]

Boltless Steel Shelving Units Prepackaged for Sale From Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that boltless steel shelving units prepackaged for sale (boltless steel shelving) from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Frost, 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) 482–8180.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 19, 2023.[1] On September 14, 2023, Commerce postponed the preliminary determination of this investigation until November 21, 2023.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 32188 (May 19, 2023) (*Initiation Notice*).

[2] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 63063 (September 14, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

Scope of the Investigation

The product covered by this investigation is boltless steel shelving from Malaysia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established deadlines for parties to submit scope case and rebuttal briefs as well as a deadline to request a hearing on issues raised in the scope briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices for Eonmetall Industries Sdn. Bhd. (EMI) in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied on facts otherwise available, with adverse inferences for Nanjing Chervon Industry Co., Ltd. (Nanjing Chervon) and Wuxi Bote Electrical Apparatus Co., Ltd. (Wuxi Bote).[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be 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 under section 776 of the Act.

Where the rates for individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 735(c)(5)(B) of the Act instructs Commerce to establish ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.'' Commerce has preliminarily determined the estimated weighted-average dumping margin for Nanjing Chervon and Wuxi Bote under section 776 of the Act and calculated an estimated weighted-average dumping margin for EMI of zero. Consequently, pursuant to section 735(c)(5)(B) of the Act, we calculated the all-others rate based on a simple average of the zero percent dumping margin and the two dumping margins based totally on adverse facts available.

Preliminary Determination

For the period April 1, 2022, through March 31, 2023, Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Eonmetall Industries Sdn. Bhd	0.00
Nanjing Chervon Industry Co., Ltd	*81.12
Wuxi Bote Electrical Apparatus Co., Ltd	*81.12
All Others	54.08

*Rate based on facts available with adverse inferences.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for EMI is zero, entries of shipments of subject merchandise from EMI will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by EMI. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter

[4] *See Antidumping Duties; Countervailing Duties:* Final Rule 62 FR 27296 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 32189.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated November 13, 2023 (Preliminary Scope Decision Memorandum).

[7] We also selected Fuyuan Wood Industry Co., Ltd. (Fuyuan Wood) as a mandatory respondent in this investigation. However, because it did not export any subject merchandise to the United States during the POI, we are preliminarily not assigning Fuyuan Wood a dumping margin.

combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination. These suspension of liquidation measures will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with this preliminary determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted not later than five days after the date for filing case briefs.[8] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[9]

As provided under 19 CFR 351.309(c)(2) and d(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[10] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[11]

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

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration. On November 3, 2023, pursuant to 19 CFR 351.210(e), Edsal Manufacturing Co., Inc. (the petitioner), requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[12]

On November 7, 2023, EMI also requested that Commerce postpone the final determination in the event the preliminary determination is affirmative and that provisional measures be extended to a period not to exceed six months.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing

[8] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[9] *See* 19 351.309(c)(2) and (d)(2).

[10] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[11] *See APO and Service Final Rule.*

[12] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated November 3, 2023.

[13] *See* EMI's Letter, ''Request for Extension of Final Determination and Provisional Measures,'' dated November 7, 2023.

boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2023–26232 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–846]

Boltless Steel Shelving Units Prepackaged for Sale From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that boltless steel shelving units prepackaged for sale (boltless steel shelving) from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6274.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 19, 2023.[1] On September 14, 2023, Commerce postponed the preliminary determination of this investigation until November 21, 2023.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is boltless steel shelving units from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 32188 (May 19, 2023) (*Initiation Notice*).

[2] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 63063 (September 14, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 32189.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated November 13, 2023 (Preliminary Scope Decision Memorandum).

discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established deadlines for parties to submit scope case and rebuttal briefs as well as a deadline to request a hearing on issues raised in the scope briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be 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 under section 776 of the Act. For this preliminary determination, Commerce calculated estimated weighted-average dumping margins for Bangkok Sheet and Siam Metal that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[7]

Preliminary Determination of the Investigation

For the period April 1, 2022, through March 31, 2023, Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Weighted-average dumping margin (percent)
Bangkok Sheet Metal Public Co. (Bangkok Sheet Metal)	Bangkok Sheet Metal Public Co. (Bangkok Sheet Metal)	2.54
Siam Metal Tech Co., Ltd. (Siam Metal Tech)	Siam Metal Tech Co., Ltd. (Siam Metal Tech)	7.58
All-others rate	All-other Thai producers/exporters, not selected	5.55

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is a no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[9]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[10] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries

[7] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment1. As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

[8] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[9] *See* 19 351.309(c)(2) and (d)(2).

[10] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, 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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On November 1, 2023, the respondents, Bangkok Sheet and Siam Metal, requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[12] On November 3, 2023, pursuant to 19 CFR 351.210(e), Edsal Manufacturing Co., Inc. (the petitioner), also requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also include add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these investigations may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- Wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- Wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- Bulk-packed parts or components of boltless steel shelving units; and
- Made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff

[11] *See APO and Service Final Rule.*

[12] *See* Bangkok Sheet and Siam Metal's Letter, ''Request to Extend Final Determination,'' dated November 1, 2023.

[13] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated November 3, 2023.

Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2023–26230 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–835]

Boltless Steel Shelving Units Prepackaged for Sale From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that boltless steel shelving units prepackaged for sale (boltless steel shelving) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Eliza DeLong or Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878 or (202) 482–1988, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 19, 2023.[1] On September 14, 2023, Commerce postponed the preliminary determination of this investigation until November 21, 2023.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is boltless steel shelving from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established deadlines for parties to submit scope case and rebuttal briefs as well as a deadline to request a hearing on issues raised in the scope briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Because Vietnam is a non-market economy country, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act.

Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, to assign a dumping margin for the Vietnam-wide entity. Further, we are preliminarily not individually examining Thanh Phong Production and Trade Limited Company as a mandatory respondent because it did not have any sales of subject merchandise during the POI. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Vietnam-Wide Entity

Commerce finds that two companies, Cuong Nghia Imp. Exp. and Parkway Thanh Phong Co., have not established eligibility for a separate rate and are considered to be part of the Vietnam-wide entity for the preliminary determination.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In this investigation, we assigned producer/exporter combination rates for Xinguang (Vietnam) Logistic Equipment Co., Ltd (Xinguang Vietnam), *i.e.,* the sole respondent eligible for a separate rate.

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 32188 (May 19, 2023) (*Initiation Notice*).

[2] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 63063 (September 14, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 32189.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated November 13, 2023 (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice,* 88 FR at 32188.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

Preliminary Determination

For the period October 1, 2022, through March 31, 2023, Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Xinguang (Vietnam) Logistic Equipment Co., Ltd	Xinguang (Vietnam) Logistic Equipment Co., Ltd	118.66
Vietnam-Wide Entity		[9] 224.94

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) for the producer/exporter combination listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Vietnam producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the Vietnam-wide entity; and (3) for all third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Vietnam producer/exporter combination (or the Vietnam-wide entity) that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

[9] The Vietnam-Wide rate based on facts available with adverse inferences.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this investigation.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

[10] Case briefs and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum.

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

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

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

On November 3, 2023, pursuant to 19 CFR 351.210(e), Edsal Manufacturing Co., Inc. (the petitioner), requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[15] On November 20, 2023, Xinguang Vietnam also requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed 135 days.[16] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- Wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- Wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- Bulk-packed parts or components of boltless steel shelving units; and
- Made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Selection of Respondents
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2023–26231 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated November 3, 2023.

[16] *See* Xinguang Vietnam's Letter, ''Request to Extend Final Results,'' dated November 20, 2023.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on silicon metal from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

DATES: Applicable November 17, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Kebker or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2254 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, Commerce published in the **Federal Register** the

AD order on silicon metal from China.[1] On May 1, 2023, the ITC instituted,[2] and Commerce initiated,[3] the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.[4]

On November 17, 2023, the ITC published its determination in the **Federal Register**, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by the *Order* is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by the *Order* is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (58 FR 27542, May 10, 1993). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this *Order.* Although the HTSUS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* is November 17, 2023.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the date of the last determination by the ITC to continue the *Order.*

Administrative Protective Order (APO)

This notice serves as a final reminder to parties subject to an 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This five-year sunset review is in accordance with sections 751(c) and 751(d)(2) of the Act and this notice is published pursuant to section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: November 22, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–26237 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order: Silicon Metal from the People's Republic of China,* 56 FR 26649 (June 10, 1991) (*Order*).

[2] *See Silicon Metal from China; Institution of a Five-Year Review,* 88 FR 26595 (May 1, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 26522 (May 1, 2023).

[4] *See Silicon Metal from the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order,* 88 FR 63933 (September 18, 2023), and accompanying Issues and Decision Memorandum.

[5] *See Silicon Metal From China; Determination,* 88 FR 80335 (November 17, 2023) (*ITC Final Determination*).

[6] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–914]

Boltless Steel Shelving Units Prepackaged for Sale From India: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that boltless steel shelving units prepackaged for sale (boltless steel shelving) from India are not being, or not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2022, through March 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 19, 2023.[1] On September 14, 2023, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 21, 2023.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigation,* 88 FR 32188 (May 19, 2023) (*Initiation Notice*).

[2] *See Boltless Steel Shelving Units Prepackaged for Sales from India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in Less-than-Fair-Value Investigations,* 88 FR 63063 (September 14, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination in the Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Investigation

The product covered by this investigation is boltless steel shelving from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established deadlines for parties to submit scope case and rebuttal briefs as well as a deadline to request a hearing on issues raised in the scope briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

For the period April 1, 2022, through March 31, 2023, Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Triune Technofab Private Limited	0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Triune Technofab Private Limited, the company selected as a mandatory respondent, has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of boltless steel shelving from India.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[8] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[9]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[10] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[11]

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

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner.

On November 3, 2023, pursuant to 19 CFR 351.210(e), Edsal Manufacturing

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 32189.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated November 13, 2023 (Preliminary Scope Decision Memorandum).

[7] Case briefs and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum.

[8] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[9] *See* 19 351.309(c)(2) and (d)(2).

[10] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[11] *See APO and Service Final Rule.*

Co., Inc. (the petitioner) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioner has requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Because we have preliminarily determined that sales of subject merchandise are not being sold at less than fair value, provisional measures are not being applied to imports of subject merchandise pursuant to section 733(d) of the Act. Accordingly, Commerce's final determination will be issued no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of boltless steel shelving from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these investigations may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

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[12] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated November 3, 2023.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–850]

Thermal Paper From the Republic of Germany: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) of May 12, 2021, through October 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Ashley Cossaart, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0462.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2021, Commerce published in the **Federal Register** the antidumping duty order on thermal paper from the Republic of Germany (Germany).[1] On November 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.[2] On January 3, 2023,

[1] *See Thermal Paper from Germany, Japan, the Republic of Korea, and Spain: Antidumping Duty Orders,* 86 FR 66284 (November 22, 2021) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation Opportunity to*

Continued

based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order*.[3] Commerce is examining Koehler Paper SE and Koehler Kehl GmbH (collectively, Koehler) as the sole mandatory respondent in this review.[4] In June 2023, we extended the deadline for preliminary results of this administrative review to no later than November 22, 2023.[5] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise subject to the *Order* is thermal paper from Germany. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). We calculated constructed export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as 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*.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period May 12, 2021, through October 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Koehler Paper SE; Koehler Kehl GmbH[7]	0.75

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), because Koehler reported the entered value for all of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either Koehler's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by Koehler for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, 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.[8]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered by this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters will continue to be 2.90 percent, the all-others rate established in the LTFV investigation.[9] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties within five days after the date of publication of this notice.[10] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than seven days after the date of the last verification report issued in this administrative review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for

Request Administrative Review and Join Annual Inquiry Service List, 87 FR 65750 (November 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50 (January 3, 2023); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 15642 (March 14, 2023) (correcting our mistake in initiating a review of Matra, a U.S. importer of subject merchandise).

[4] *See* Memorandum, ''Respondent Selection,'' dated February 7, 2023; Memorandum, ''Additional Respondent Selection,'' dated February 23, 2023; and Commerce's Letter, ''Matra Americas LLC Reporting Methodology,'' dated March 17, 2023.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of the 2021–2022 Antidumping Duty Administrative Review,'' dated June 27, 2023.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Thermal Paper from the Republic of Germany,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] Commerce has preliminarily determined to collapse these companies and treat them as a single entity. For further discussion, *see* Preliminary Decision Memorandum.

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

[9] *See Order,* 86 FR at 66286.

[10] *See* 19 CFR 351.224(b).

filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the Issues and Decision Memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

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. 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 briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[15]

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

Verification

On April 13, 2023, Domtar Corporation and Appvion, LLC (collectively, the petitioners in this proceeding) requested that Commerce conduct verification of the factual information submitted by the respondent in this administrative review.[16] Accordingly, as provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for its final results.

Notification to Importers

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

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Affiliation and Collapsing
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2023–26235 Filed 11–28–23; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

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

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[15] *See* 19 CFR 351.310(d).

[16] *See* Petitioners' Letter, ''Request for Verification,'' dated April 13, 2023.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–454–000]

Mountain Top Energy 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 Mountain Top Energy 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, 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 December 12, 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 TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26242 Filed 11–28–23; 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 Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–166–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: SCRM Filing Nov 23 to be effective 1/1/2024.

Filed Date: 11/21/23.

Accession Number: 20231121–5128.

Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: RP24–167–000.

Applicants: Sierrita Gas Pipeline LLC.

Description: Compliance filing: Sierrita Operational and Purchase Sales Report 2023 to be effective N/A.

Filed Date: 11/21/23.

Accession Number: 20231121–5210.

Comment Date: 5 p.m. ET 12/4/23.

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. The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26244 Filed 11–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–101]

Georgia Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Lloyd Shoals Hydroelectric Project (project). The project is located on the Ocmulgee River, in Butts, Henry, Jasper, and Newton Counties, Georgia. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or at (866) 208–3676 (toll-free), or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.*

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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–2336–101.

For further information, contact Allan Creamer at 202–502–8365 or *allan.creamer@ferc.gov.*

Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26240 Filed 11–28–23; 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: EC24–20–000.

Applicants: DCR Transmission, L.L.C.

Description: Application for Authorization Under Section 203 of the Federal Power Act of DCR Transmission, L.L.C.

Filed Date: 11/21/23.

Accession Number: 20231121–5230.

Comment Date: 5 p.m. ET 12/12/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–632–012; ER15–634–012; ER19–2287–003; ER14–2939–010; ER15–2728–012; ER19–2294–003; ER16–711–009; ER14–2466–013; ER14–2465–013; ER19–2305–003.

Applicants: Valencia Power, LLC, RE Columbia Two LLC, Database returns error. There is a problem with archive data and system. Contact Administrator., Pio Pico Energy Center, LLC, Mesquite Power, LLC, Maricopa West Solar PV, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Goal Line L.P., Cottonwood Solar, LLC, CID Solar, LLC.

Description: Supplement to January 3, 2022, Triennial Market Power Analysis for Southwest Region of CID Solar, LLC, et. al.

Filed Date: 11/20/23.

Accession Number: 20231120–5234.

Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER15–1471–014; ER13–291–004; ER15–1672–013; ER16–2010–008; ER14–1468–015; ER10–2201–005.

Applicants: Marina Energy, LLC, KMC Thermo, LLC, Hancock Wind, LLC, Evergreen Wind Power II, LLC, EnergyMark, LLC, Blue Sky West, LLC.

Description: Supplement to June 30, 2023, Triennial Market Power Analysis for Northeast Region of Marina Energy, LLC, et al.

Filed Date: 11/20/23.

Accession Number: 20231120–5220.

Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER17–1794–005.

Applicants: Innovative Solar 42, LLC.

Description: Supplement to May 2, 2022, Notice of Change in Status of Innovative Solar 42, LLC under ER17–1794.

Filed Date: 11/20/23.

Accession Number: 20231120–5223.

Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER20–59–005; ER15–1471–013; ER10–1946–017; ER15–632–015; ER16–915–007; ER15–634–015; ER13–291–003; ER15–1672–012; ER20–422–004; ER20–58–004; ER10–2861–012; ER20–57–004; ER19–2287–005; ER16–2520–006; ER16–612–002; ER16–2010–007; ER14–2939–013; ER14–1468–014; ER18–97–004; ER10–1874–016; ER19–9–010; ER15–2728–015; ER10–2201–004; ER19–2294–005; ER14–2140–014; ER12–1308–015; ER15–1952–014; ER16–711–011; ER14–2466–016; ER14–2465–016; ER14–2141–014; ER16–2561–007; ER13–1504–013; ER19–8–006; ER17–318–006; ER20–339–004; ER19–2305–005; ER10–2721–014.

Applicants: El Paso Electric Company, Valencia Power, LLC, Twiggs County Solar, LLC, Three Peaks Power, LLC, Sweetwater Solar, LLC, SWG Arapahoe, LLC, Sunflower Wind Project, LLC, Selmer Farm, LLC, RE Columbia Two LLC, RE Camelot LLC, Pio Pico Energy Center, LLC, Pavant Solar LLC, Palouse Wind, LLC, Mulberry Farm, LLC, Mesquite Power, LLC, Marina Energy, LLC, Maricopa West Solar PV, LLC, Mankato Energy Center II, LLC, Mankato Energy Center, LLC, MS Solar 3, LLC, KMC Thermo, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Hancock Wind, LLC, Greeley Energy Facility, LLC, Grand View PV Solar Two LLC, Goal Line L.P., GA Solar 3, LLC, Fountain Valley Power, L.L.C., FL Solar 4, LLC, FL Solar 1, LLC, Evergreen Wind Power II, LLC, EnergyMark, LLC, Cottonwood Solar, LLC, Comanche Solar PV, LLC, CID Solar, LLC, Broad River Energy LLC, Blue Sky West, LLC, AZ Solar 1, LLC.

Description: Supplement to May 1, 2023, Notice of Non-Material Change in Status of AZ Solar 1, LLC, et. al.

Filed Date: 11/20/23.

Accession Number: 20231120–5231.

Comment Date: 5 p.m. ET 12/11/23.

Docket Numbers: ER23–1955–001.

Applicants: Earthrise Lincoln Interconnection, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5083.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–1957–001.

Applicants: Earthrise Gibson City Interconnection, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5080.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–1959–001.

Applicants: Earthrise Crete Interconnection, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5077.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2015–001.

Applicants: Crete Energy Venture, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5074.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2016–001.

Applicants: Lincoln Generating Facility, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5085.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2017–001.

Applicants: Gibson City Energy Center, LLC.

Description: Compliance filing: Compliance Filing Reflecting Actual Effective Date of Tariff Records to be effective N/A.

Filed Date: 11/22/23.

Accession Number: 20231122–5082.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2374–003.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Response to Commission's 9/1/23 Deficiency Letter in ER23–2347 to be effective 9/11/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5111.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2449–002.

Applicants: Lyons Solar, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 10/1/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5119.
Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2713–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Commission's 10/26/23 Deficiency Letter in ER23–2713 to be effective 7/27/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5095.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2764–001.

Applicants: Northeastern Power & Gas, LLC.

Description: Tariff Amendment: Amendment to 1—Deficiency filing to be effective 9/25/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5087.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER23–2935–001.

Applicants: Midcontinent Independent System Operator, Inc., Northern Indiana Public Service Company LLC.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–11–22_Amendment NIPSCO Request for Depreciation Rates to be effective 12/31/9998.

Filed Date: 11/22/23.

Accession Number: 20231122–5092.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–463–000.

Applicants: Elektron Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 1/21/2024.

Filed Date: 11/21/23.

Accession Number: 20231121–5163.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: ER24–464–000.

Applicants: Horseshoe Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 1/21/2024.

Filed Date: 11/21/23.

Accession Number: 20231121–5166.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: ER24–465–000.

Applicants: Nestlewood Solar I LLC.

Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 12/27/2023.

Filed Date: 11/21/23.

Accession Number: 20231121–5170.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: ER24–466–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, Service Agreement No. 7140; Queue No. U2–073/Z2–103/AB2–038 to be effective 1/22/2024.

Filed Date: 11/21/23.

Accession Number: 20231121–5203.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: ER24–467–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 3984 Cowskin Solar Energy GIA Cancellation to be effective 8/9/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5000.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–468–000.

Applicants: Black Walnut Energy Storage, LLC.

Description: Baseline eTariff Filing: Black Walnut Energy Storage, LLC Co-Tenancy and Shared Facilities Agreement to be effective 11/23/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5052.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–469–000.

Applicants: Arizona Public Service Company.

Description: 205(d) Rate Filing: Rate Schedule No. 245, Amendment No. 1 to be effective 1/22/2024.

Filed Date: 11/22/23.

Accession Number: 20231122–5056.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–470–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2023–11–22_SA 3413 Ameren IL-Cass County Solar Project 3rd Rev GIA (J859) to be effective 11/13/2023.

Filed Date: 11/22/23.

Accession Number: 20231122–5059.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–471–000.

Applicants: Indra Power Business OH LLC.

Description: Baseline eTariff Filing: 2023–11–22 Indra Power Business OH LLC Market-Based Rate Application Filing to be effective 1/22/2024.

Filed Date: 11/22/23.

Accession Number: 20231122–5081.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–472–000.

Applicants: NextEra Energy Transmission MidAtlantic Indiana, Inc., PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: NextEra Energy Transmission MidAtlantic Indiana, Inc. submits tariff filing per 35.13(a)(2)(iii: NextEra Energy MidAtlantic Indiana, Inc. Request for Rate Incentive Treatment to be effective 1/22/2024.

Filed Date: 11/22/23.

Accession Number: 20231122–5112.

Comment Date: 5 p.m. ET 12/13/.

Docket Numbers: ER24–473–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, Service Agreement No. 7141; Queue No. AG1–045 to be effective 1/22/2024.

Filed Date: 11/22/23.

Accession Number: 20231122–5133.

Comment Date: 5 p.m. ET 12/13/23.

Docket Numbers: ER24–474–000.

Applicants: Hardin Solar Energy II LLC

Description: Initial rate filing: Filing of Shared Facilities Agreement to be effective 1/22/2024.

Filed Date: 11/22/23.

Accession Number: 20231122–5164.

Comment Date: 5 p.m. ET 12/13/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26245 Filed 11–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP22–21–000	11–21–2023	FERC Staff.[1]
Exempt:		
None.		

[1] Emailed comments dated 11/18/2023 from Jarrod Baniqued.

Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26239 Filed 11–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–536–000]

Eastern Shore Natural Gas Company; Notice of Public Scoping Session for the Proposed Worcester Resiliency Upgrade Project

On October 11, 2023, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Scoping Period Requesting Comments On Environmental Issues for the Worcester Resiliency Upgrade Project.* With that notice, the Commission requested public comments on the scope of issues to address in the environmental document that the FERC staff will prepare to discuss the environmental impacts of the Worcester Resiliency Upgrade (Project). The Project involves construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Worcester, Wicomico, and Somerset Counties, Maryland and Sussex County, Delaware (appendix 1). The Commission will use this environmental document in its decision-making process to determine whether the Project is in the public convenience and necessity.

The October 11, 2023 notice announced the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Project. This notice announces the scoping session dates, locations, and times (see *Public Participation* section of this notice). As part of the National Environmental Policy Act (NEPA) review process, the Commission considers concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues.

This notice was sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact

sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project.

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''.

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP23–536–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend the public scoping session its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Wednesday, December 13, 2023, 5:00 to 7:00 p.m. EDT.	Bishopville Volunteer Fire Department, 10709 Bishopville Road, Bishopville, MD 21813, (410) 352–5778.

The primary goal of this scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum number of oral comments in a convenient way during the timeframe allotted.

You may arrive at any time after the start times listed above. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until the end times listed above. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session up to an hour before the end times listed above. Please see appendix 2 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from Eastern Shore will also be present to answer project-specific questions.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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.*

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–536–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

(2) Return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Eastern Shore has filed its application with the Commission and you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. *https://elibrary.ferc.gov/eLibrary/search*. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26243 Filed 11–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–455–000]

Electree 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 Electree 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, 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 December 12, 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 TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–26241 Filed 11–28–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11579–01–R9]

Notice of Availability and Extension of Comment Period for the Preliminary Designation of Certain Stormwater Discharges Within Two Watersheds in Los Angeles County, California Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; extension of comment period and correction.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 published a document in the **Federal Register** on November 2, 2023, soliciting comment on the preliminary designation of stormwater discharges from certain commercial, industrial, and institutional (CII) sites in two watersheds in Los Angeles County, California for regulation under the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permitting program. The November 2, 2023 notice of availability contained an incorrect email address for submitting comments

which is corrected below and the review and comment period is extended to provide a 60-day public comment period. All other information in the November 2, 2023 notice of availability is correct.

DATES: Written comments must be received on or before January 3, 2024.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA Region 9, Water Division, NPDES Permits Section; telephone (415) 972–3510; email address: *bromley.eugene@epa.gov.*

Correction

In the **Federal Register** of November 2, 2023 in FRL–11427–01–R9, page 75282, first column correct line after **ADDRESSES** to read:

''**ADDRESSES:** Comments should be submitted via email to the following address: *R9RDA@epa.gov* and include ''Comments on the 2023 Preliminary Designation'' in the subject line.''

Dated: November 22, 2023.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2023–26226 Filed 11–28–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–E–0792, FDA–2021–E–0793, and FDA–2021–E–0803]

Determination of Regulatory Review Period for Purposes of Patent Extension; Olinvyk

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Olinvyk and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2021–E–0792, FDA–2021–E–0793, and FDA–2021–E–0803 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OLINVYK.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Olinvyk (oliceridine fumarate) indicated for the management of acute pain severe enough to require an intravenous opioid analgesic and for whom alternative treatments are inadequate. Subsequent to this approval, the USPTO received patent term restoration applications for Olinvyk (U.S. Patent Nos. 8,835,488; 9,309,234; 9,642,842) from Trevena, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated August 24, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Olinvyk represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Olinvyk is 3,206 days. Of this time, 2,112 days occurred during the testing phase of the regulatory review period, while 1,094 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 22, 2012. The applicant claims January 24, 2012, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 22, 2012, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* November 2, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for Olinvyk (NDA 210730) was initially submitted on November 2, 2017.

3. *The date the application was approved or the effective date of approval for a drug product recommended for control under the Controlled Substances Act:* October 30, 2020. FDA has verified the applicant's claim that NDA 210730 was approved on August 7, 2020, and the date of issuance of the interim final rule controlling the drug under section 201(j) of the Controlled Substances Act was October 30, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 951 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26253 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2023, FDA–2022–E–2024, and FDA–2022–E–2025]

Determination of Regulatory Review Period for Purposes of Patent Extension; PYLARIFY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for PYLARIFY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be

considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2023, FDA–2022–E–2024, and FDA–2022–E–2025 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; PYLARIFY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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FDA has approved for marketing the human drug product, PYLARIFY (piflufolastat F18). PYLARIFY is indicated for positron emission tomography of prostate-specific membrane antigen positive lesions in men with prostate cancer:

- with suspected metastasis who are candidates for initial definitive therapy.
- with suspected recurrence based on elevated serum prostate-specific antigen level.

Subsequent to this approval, the USPTO received patent term restoration applications for PYLARIFY (U.S. Patent Nos. 8,487,129; 8,778,305; and 9,861,713) from Progenics Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of PYLARIFY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for PYLARIFY is 2,681 days. Of this time,

2,441 days occurred during the testing phase of the regulatory review period, while 240 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 24, 2014. The applicant claims January 18, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 24, 2014, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 29, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for PYLARIFY (NDA 214793) was initially submitted on September 29, 2020.

3. *The date the application was approved:* May 26, 2021. FDA has verified the applicant's claim that NDA 214793 was approved on May 26, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 736 days, 1,373 days or 1,463 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26261 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–0671]

Determination of Regulatory Review Period for Purposes of Patent Extension; Azstarys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Azstarys and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–0671 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; AZSTARYS.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Azstarys (serdexmethylphenidate and dexmethylphenidate), which is indicated for the treatment of attention deficit hyperactivity disorder in patients 6 years of age and older. Subsequent to this approval, the USPTO received a patent term restoration application for Azstarys (U.S. Patent No. 9,079,928) from KemPharm, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Azstarys represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Azstarys is 1,676 days. Of this time, 1,244 days occurred during the testing phase of the regulatory review period, while 432 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 6, 2016. The applicant claims September 19, 2016, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 6, 2016, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 2, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Azstarys (NDA 212994) was initially submitted on March 2, 2020.

3. *The date the application was approved or the effective date of approval for a drug product recommended for control under section 201(j) of the Controlled Substances Act:* May 7, 2021. FDA has verified the applicant's claim that NDA 212994 was approved on March 2, 2021; however, the Drug Enforcement Agency issued an interim final rule controlling the product under section 201(j) of the Controlled Substances Act on May 7, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 948 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26246 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–0928]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lupkynis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Lupkynis and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–0928 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; LUPKYNIS.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for

example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product Lupkynis (voclosporin). Lupkynis is indicated in combination with a background immunosuppressive therapy regimen for the treatment of adult patients with active lupus nephritis. Subsequent to this approval, the USPTO received a patent term restoration application for Lupkynis (U.S. Patent No. 7,332,472) from Aurinia Pharmaceuticals Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Lupkynis represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Lupkynis is 7,584 days. Of this time, 7,338 days occurred during the testing phase of the regulatory review period, while 246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 20, 2000. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 20, 2000.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* May 22, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Lupkynis (NDA 213716) was initially submitted on May 22, 2020.

3. *The date the application was approved:* January 22, 2021. FDA has verified the applicant's claim that NDA 213716 was approved on January 22, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26247 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0937 and FDA–2022–E–0941]

Determination of Regulatory Review Period for Purposes of Patent Extension; ORGOVYX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Orgovyx and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0937 and FDA–2022–E–0941 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ORGOVYX.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at:: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product Orgovyx (relugolix). Orgovyx is indicated for the treatment of adult patients with advances prostate cancer. Subsequent to this approval, the USPTO received a patent term restoration application for Orgovyx (U.S. Patent Nos. 7,300,935 and 8,058,280) from Myovant Sciences on behalf of Takeda Pharmaceutical Company Limited, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Orgovyx represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Orgovyx is 4,875 days. Of this time, 4,632 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 16, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 16, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* April 20, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Orgovyx (NDA 214621) was initially submitted on April 20, 2020.

3. *The date the application was approved:* December 18, 2020. FDA has verified the applicant's claim that NDA 214621 was approved on December 18, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,783 days or 1,827 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a

true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26258 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0396; FDA–2022–E–0397; FDA–2022–E–0398; and FDA–2022–E–0428]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tukysa

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Tukysa and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0396; FDA–2022–E–0397; FDA–2022–E–0398; FDA–2022–E–0428 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TUKYSA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug

product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Tukysa (tucatinib) indicated in combination with trastuzumab and capecitabine for treatment of adult patients with advanced unresectable or metastatic HER2-positive breast cancer, including patients with brain metastases, who have received one or more prior anti-HER2-based regimens in the metastatic setting. Subsequent to this approval, the USPTO received patent term restoration applications for Tukysa (U.S. Patent Nos. 7,452,895; 8,648,087; 9,457,093; and 9,693,989) from Array BioPharma Inc. and Seattle Genetics, Inc. (Agent of Array BioPharma Inc.) and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Tukysa represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Tukysa is 4,653 days. Of this time, 4,533 days occurred during the testing phase of the regulatory review period, while 120 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 24, 2007. FDA has verified the applicant's claims that the date the investigational new drug application became effective was on July 24, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 20, 2019. FDA has verified the applicant's claims that the new drug application (NDA) for Tukysa (NDA 213411) was initially submitted on December 20, 2019.

3. *The date the application was approved:* April 17, 2020. FDA has verified the applicant's claim that NDA 213411 was approved on April 17, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 552 days, 570 days, 1,101 days or 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26256 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2091]

Determination of Regulatory Review Period for Purposes of Patent Extension; Kerendia

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Kerendia and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2091 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; KERENDIA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Kerendia (finerenone) indicated to reduce the risk of sustained eGFR decline, end stage kidney disease, cardiovascular death, non-fatal myocardial infarction, and hospitalization for heart failure in adult patients with chronic kidney disease associated with type 2 diabetes. Subsequent to this approval, the USPTO received a patent term restoration application for Kerendia (U.S. Patent No. 8,436,180) from Bayer Intellectual Property GmbH and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Kerendia represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Kerendia is 2,950 days. Of this time, 2,707 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 13, 2013. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 13, 2013.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* November 9, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Kerendia (NDA 215341) was initially submitted on November 9, 2020.

3. *The date the application was approved:* July 9, 2021. FDA has verified the applicant's claim that NDA 215341 was approved on July 9, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,597 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26251 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2707]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 29, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0277. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Petitions for Exemption From Preemption

OMB Control Number 0910–0277—Extension

This information collection supports FDA regulations. Under section 403A(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard-of-identity requirements. Section 100.1(c) (21 CFR 100.1(c)) provides prerequisites a petition must satisfy for an exemption from preemption. Section 100.1(d) sets forth the information a State is required to submit in such a petition. The petition must be submitted to the Dockets Management Staff. The information required under § 100.1 enables FDA to determine whether the State food labeling or standard-of-identity requirement satisfies the criteria of section 403A(b) of the FD&C Act for granting exemption from Federal preemption.

In the **Federal Register** of July 31, 2023 (88 FR 49469), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four information collection topics solicited.

Description of Respondents: The respondents to this collection of information are State and local governments who regulate food labeling and standards-of-identity.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
100.1; petition for exemption from preemption	1	1	1	40	40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1 is minimal because petitions for exemption from preemption are seldom submitted by States. In the next 3 years, we estimate that one or fewer petitions will be submitted annually.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26250 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2199; FDA–2022–E–2200; and FDA–2022–E–2201]

Determination of Regulatory Review Period for Purposes of Patent Extension; Empaveli

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Empaveli and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2199; FDA–2022–E–2200; and FDA–2022–E–2201 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EMPAVELI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Empaveli (pegcetacoplan) indicated for the treatment of adult patients with paroxysmal nocturnal hemoglobinuria. Subsequent to this approval, the USPTO received patent term restoration applications for Empaveli (U.S. Patent Nos. 10,035,822; 10,125,171; and 10,875,893) from Apellis Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Empaveli represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Empaveli is 2,501 days. Of this time, 2,258 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 11, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 11, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 14, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Empaveli (NDA 215014) was initially submitted on September 14, 2020.

3. *The date the application was approved:* May 14, 2021. FDA has verified the applicant's claim that NDA 215014 was approved on May 14, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 137 days, 545 days, or 579 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26255 Filed 11–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Evidence Based Telehealth Network Program Measures

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than December 29, 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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evidence Based Telehealth Network Program Measures, OMB No. 0906–0043—Revision.

Abstract: This ICR is for a revision of a currently approved information collection of measures for the Office for the Advancement of Telehealth's (OAT) Evidence Based Telehealth Network Program, under which OAT administers cooperative agreements in accordance with section 330I of the Public Health Service Act (42 U.S.C. 254c–14), as amended. The purpose of this program is to fund evidence-based projects that utilize telehealth technologies through telehealth networks to expand access to, and improve access to and the quality of, health care services. This program will work to help assess the effectiveness of evidence-based practices with the use of telehealth for patients, providers, and payers.

In the Evidence-Based Telehealth Network Program Report, the adjusted data collection instrument includes the addition, removal, and revision of measures, with 27 total data elements addressing patient encounter information. The current measures focus on behavioral health and the proposed adjusted measures allow for the inclusion of broader health care services and expanded outcome measures. Five data elements were updated to specify data collection that allows for deeper understanding of outcomes related to socioeconomic indicators. The estimated burden for the Evidence-Based Telehealth Network Program

Report has decreased since the data collection frequency is changing from monthly to quarterly. In addition, the information collected from grantees in the Performance Improvement and Measurement System more closely aligns measures with the Notice of Funding Opportunity and will assist in clarifying program measures and impact. These adjustments allow OAT to gain a more thorough understanding of how to utilize telehealth technologies through telehealth to improve access to, and improve the quality of, health care services.

A 60-day notice published in the **Federal Register** on August 18, 2023, 88 FR 56640–41. There were no public comments, but OAT made minor adjustments to the numbering, wording, and some categories on the Rural Telehealth Research Center Data Dictionary and accompanying Direct-to-Consumer Telehealth Evidence Collection tool to increase ease of use.

Need and Proposed Use of the Information: The measures will enable HRSA and OAT to capture data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures cover the principal topic areas of interest to OAT, including: (1) population demographics, (2) access to health care, (3) cost savings and cost-effectiveness, and (4) clinical outcomes.

Likely Respondents: The likely respondents are award recipients of the Evidence Based Telehealth Network Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes: the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total estimated annualized burden hours: instrument name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Evidence-Based Telehealth Network Program Report	11	4	44	31	1,364
Telehealth Performance Measurement Report	11	1	11	5	55
Total	*11		55		1,419

*HRSA estimates 11 unique respondents, each completing the two forms.

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–26248 Filed 11–28–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Rural Health Network Development Program Performance Improvement Measurement System, OMB No. 0906–0010–Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than December 29, 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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Health Network Development Program Performance Improvement Measurement System, OMB No. 0906–0010–Revision.

Abstract: The Rural Health Network Development (RHND) program is authorized under section 330A(f) of the Public Health Service Act (42 U.S.C. 254c(f)). The purpose of this program is to support integrated health care networks that collaborate to achieve efficiencies; expand access to, coordinate, and improve the quality of basic health care services and associated health outcomes; and strengthen the rural health care system as a whole. The program supports networks as they address gaps in service, enhance systems of care, and expand capacity of the local health care system.

RHND-funded programs promote population health management and the transition towards value-based care through diverse network participants that include traditional and nontraditional network partners. Evidence of program impact demonstrated by outcome data and program sustainability are integral components of the program. This is a 4-year competitive program for networks composed of at least three participants that are existing health care providers. At least 66 percent of network

participants must be located in a HRSA-designated rural area.

HRSA currently collects information about RHND awards using an OMB-approved set of performance measures and seeks to revise that approved collection. The proposed revisions are being implemented to better gather award recipient data in response to previously accumulated award recipient feedback, peer-reviewed research, and information gathered from the previously approved RHND measures.

A 60-day notice was published in the **Federal Register** on July 20, 2023, 88 FR 46800–46801. There was one public comment. No changes were made to the information collection since the comment was outside the scope of this ICR.

Need and Proposed Use of the Information: This program needs measures that will enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to HRSA, including: (1) access to care, (2) population demographics, (3) staffing, (4) consortium/network, (5) sustainability, and (6) project specific domains. All measures will evaluate HRSA's progress toward achieving its goals.

The proposed changes include additional components under questions surrounding the network's benefits and funding strategies, as well as the types of participant organizations. Questions surrounding Health Information Technology and Telehealth have been modified to reflect an updated telehealth definition based on renewed knowledge on the use of both Health Information Technology and Telehealth, and to improve understanding of how these important technologies are affecting HRSA award recipients. The Demographics and Services section now includes a question requesting grantees to identify which counties they have served during the project. Finally, revised National Quality Forum and Centers for Medicare & Medicaid Services measures were included to allow uniform collection efforts throughout the HRSA Federal Office of Rural Health Policy.

The total number of responses has remained at 44 since the previous ICR. While the new RHND grant cycle maintained the same number of award recipients and number of respondents, in consideration of the new cohort of awardees, HRSA has increased the estimated average burden per response. The increase in burden is largely due to the amount of time it takes to build systems to capture and report data at the start of a new project. Larger networks or consortiums with multiple partners and programs across different organizations also reported higher burdens due to the wait time in between requests.

Likely Respondents: Respondents will be award recipients of the Rural Health Network Development Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement and Measurement System Database	44	1	44	48.8	2,147.2
Total	44	1	44	48.8	2,147.2

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–26249 Filed 11–28–23; 8:45 am]

BILLING CODE 4165–15–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35061]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 24, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2023. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division

of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

E.M.O. Sterling Return LT Fund LP [File No. 811–23278]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant currently has 49 beneficial owners, is not presently making a public offering of securities and does not propose to make any public offering of securities. Applicant will continue to operate as a private investment fund in reliance on Section 3(c)(1) of the Act.

Filing Date: The application was filed on October 30, 2023.

Applicant's Address: 8310 South Valley Highway, Englewood, Colorado 80112.

NB Private Markets Fund II (Master) LLC [File No. 811–22476]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 6, 2023, Applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by the Applicant. Applicant also has retained $38,400 for the purpose of paying expected liabilities.

Filing Dates: The application was filed on October 16, 2023.

Applicant's Address: 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

NB Private Markets Fund II (TE) LLC [File No. 811–22474]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 6, 2023, Applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $3,500 incurred in connection with the liquidation were paid by the Applicant. Applicant also has retained $28,400 for the purpose of paying expected liabilities.

Filing Dates: The application was filed on October 16, 2023.

Applicant's Address: 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

NB Private Markets Fund II (TI) LLC [File No. 811–22475]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 6, 2023, Applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $3,500 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $23,400 for the purpose of paying expected liabilities.

Filing Dates: The application was filed on October 16, 2023.

Applicant's Address: 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

Western Asset Municipal Partners Fund Inc. [File No. 811–07362]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The Applicant has transferred its assets to Western Asset Managed Municipals Fund Inc., and on October 16, 2023 made a final distribution to its shareholders based on net asset value. Expenses of $1,248,932 incurred in connection with the reorganization were paid by the Applicant and the acquiring fund.

Filing Date: The application was filed on October 16, 2023.

Applicant's Address: 620 Eighth Avenue, 47th Floor, New York, New York 10018.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–26236 Filed 11–28–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Terrorism Risk Insurance Program (TRIP)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov*, calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Terrorism Risk Insurance Program (TRIP).

OMB Control Number: 1505–0200.

Type of Review: Extension without change of a currently approved collection.

Description: The Terrorism Risk Insurance Act of 2002, as amended (TRIA or the Act), established the Terrorism Risk Insurance Program (TRIP or Program). The Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an ''act of terrorism,'' as defined by TRIA. In order for the Program to make payments following a certified ''act of terrorism,'' the losses from an event must exceed certain thresholds and be in excess of participating insurer deductibles. Only ''acts of terrorism'' that have been certified as such by the Secretary (in consultation with the Attorney General and the Secretary of Homeland Security) are subject to the compensation provisions of the Program. In the event Treasury does make payments under the Program, it may be required, through surcharges imposed upon all commercial policyholders, to recoup some or all of any amounts expended.

Since the inception of the Program in 2002, Treasury has sought and obtained from the Office of Management and Budget (OMB) approvals for information collections that will be necessary if Treasury needs to process claims for the Federal share of compensation, and potentially recoup amounts expended as required under TRIA. Most of these information collections are managed through forms that have been developed by Treasury to permit participating insurers to demonstrate that they are entitled to payments for the Federal share of compensation. In some cases (as explained further in this Notice), the information collection is not subject to a specific form but is based upon

circumstances that may develop in the future, in the event the Program is triggered, or might be triggered, by the Secretary's certification of an act of terrorism.

In December 2019, the Terrorism Risk Insurance Program Reauthorization Act of 2019 extended the Program until December 31, 2027. Therefore, to administer the Program, Treasury needs to continue the existing information collections to permit the receipt and resolution of claims, and potential recoupment of amounts expended by Treasury. Treasury seeks to extend these previously approved collections without change. Treasury has updated the burden estimates associated with the renewal of the existing forms or collection obligations to account for the current number of insurers participating in the Program, based upon the best information now available to Treasury. As there are no proposed changes to the current forms or collection obligations, there are no changes to the previously estimated time burdens associated with the completion of those forms and collection obligations. None of the identified information collections will be triggered unless there is a certified act of terrorism (including the claims information that an insurer seeking payment of the Federal share of compensation would need to provide), or in some cases where Treasury is considering certification of an act of terrorism. Treasury has designed the forms to identify elements that insurers typically collect already in their ordinary course of business when handling insurance claims, which will minimize any burden associated with their completion.

Form: Treasury Forms TRIP 01, 02, 02A, 02B, 02C, 03, 04A, 04B, 05, 06 & 07.

Affected Public: Business/financial institutions.

Estimated Number of Respondents: 9,181.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 46,431.

Estimated Time per Response: Varies from 15 minutes to 40 hours depending on form or submission type.

Estimated Total Annual Burden Hours: 257,077.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–26259 Filed 11–28–23; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 228 November 29, 2023

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Oil, Electric, and Weatherized Gas Consumer Furnaces; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0031]

RIN 1904–AF19

Energy Conservation Program: Energy Conservation Standards for Oil, Electric, and Weatherized Gas Consumer Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including non-weatherized oil-fired furnaces (''NWOFs''), mobile home oil-fired furnaces (''MHOFs''), weatherized gas furnaces (''WGFs''), weatherized oil-fired furnaces (''WOFs''), and electric furnaces (''EFs''). EPCA also requires the U.S. Department of Energy (''DOE'') to periodically review its existing standards to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notification of proposed determination (''NOPD''), DOE has initially determined that amended energy conservation standards for EFs, NWOFs, MHOFs, WOFs, and WGFs do not need to be amended. DOE requests comment on this proposed determination and the associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting webinar upon request. Please request a public meeting webinar no later than December 13, 2023. See section VI, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: Written comments and information are requested and will be accepted on or before January 29, 2024.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2021–BT–STD–0031. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0031 and/or RIN 1904–AF19, by any of the following methods:

Email: OEWGFurnaces2021STD0031@ee.doe.gov. Include the docket number EERE–2021–BT–STD–0031 and/or RIN 1904–AF19 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-STD-0031.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, 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:* (240) 597–6737. *Email: ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. *Email: Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Determination

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include oil, electric, and weatherized gas consumer furnaces, the subject of this NOPD. (42 U.S.C. 6292(a)(5))

Pursuant to EPCA, DOE is required to review the existing energy conservation standards for covered consumer products, at a minimum, every six years after issuance of any final rule establishing or amending a standard (42 U.S.C. 6295(m)(1)). DOE is conducting this review of the energy conservation standards for oil, electric, and weatherized gas consumer furnaces under EPCA's six-year-lookback authority. (*Id.*) Pursuant to that statutory provision, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (*Id.*) For the reasons explained in the paragraphs that follow and elsewhere in this document, DOE has tentatively determined it appropriate to issue this NOPD for the consumer furnaces subject to this rulemaking.

For this proposed determination, DOE analyzed oil, electric, and weatherized gas consumer furnaces subject to energy conservation standards specified in 10 CFR 430.32(e)(1).

DOE first analyzed the technological feasibility of more energy-efficient oil, electric, and weatherized gas furnaces and determined that amended standards for electric furnaces are not technologically feasible. For those oil and weatherized gas furnaces for which DOE determined higher standards to be technologically feasible, DOE evaluated whether higher standards would be cost-effective by conducting life-cycle cost (''LCC'') and payback period (''PBP'') analyses. In addition, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (''NIA''), in which it estimated the net present value (''NPV'') of the total costs and benefits experienced by consumers.

Based on the results of the analyses, including the consideration of impacts on manufacturers and product availability as summarized in section V of this document, DOE has tentatively determined that current standards for oil, electric, and weatherized gas furnaces do not need to be amended.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the historical background relevant to the establishment of energy conservation standards for oil, electric, and weatherized gas furnaces.

A. Authority

Among other things, EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified) authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer furnaces, the subject of this document. (42 U.S.C. 6292(a)(5)) EPCA prescribed the initial energy conservation standards for these products (42 U.S.C. 6295(f)(1)–(2)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)(4) and 42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for consumer furnaces appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix N.

Federal energy conservation requirements for covered products established under EPCA generally supersede state laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of federal preemption in limited

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

circumstances for particular state laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

Pursuant to the amendments to EPCA contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for oil, electric, and weatherized gas furnaces address standby mode and off mode energy use. DOE's energy conservation standards address standby mode and off mode energy use only for non-weatherized oil-fired furnaces (including mobile home furnaces) and electric furnaces. 10 CFR 430.32(e)(1)(iii). In this analysis, DOE considers such energy use in its determination of whether energy conservation standards need to be amended.

EPCA also requires that DOE must periodically review its already established energy conservation standards for a covered product no later than six years from the issuance of a final rule establishing or amending a standard for a covered product. (42 U.S.C. 6295(m)) This six-year-lookback provision requires that DOE publish either a notice of determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost-effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Among the factors DOE considers in evaluating whether a proposed standard level is economically justified includes whether the proposed standard at that level is cost-effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE is publishing this NOPD in satisfaction of the six-year-lookback review requirement in EPCA.

B. Background

1. Current Standards

DOE most recently completed a review of its consumer furnace standards in a direct final rule (''DFR'') published in the **Federal Register** on June 27, 2011 (''June 2011 DFR''), through which DOE amended the existing energy conservation standards for non-weatherized gas furnaces (''NWGFs''), mobile home gas furnaces (''MHGFs''), weatherized gas furnaces (''WGFs''), NWOF, MHOFs, and weatherized oil furnaces (''WOFs'').[3] 76 FR 37408. The June 2011 DFR amended the existing energy conservation standards for NWGFs, MHGFs, and NWOFs (which are specified in terms of annual fuel utilization efficiency ''AFUE''), and amended the compliance date (but left the existing standards in place) for WGFs. The June 2011 DFR also established electrical standby mode and off mode standards for NWGFs, MHGFs, NWOFs, MHOFs, and electric furnaces. As a result of a settlement agreement approved by the Court of Appeals for the D.C. Circuit, the standards established by the June 2011 DFR for NWGFs and MHGFs did not go into effect.[4] However, the court order left in place the standards for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces, which are the subject of this NOPD.

The AFUE standards currently applicable to all consumer furnaces, including the product classes for which DOE is conducting analyses in this NOPD, are set forth in DOE's regulations at 10 CFR 430.32(e)(1)(ii). Table II.1 presents the currently applicable standards for oil, electric, and weatherized gas furnaces and the date on which compliance with each such standard was required.

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[3] This rulemaking was undertaken pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.,* 08–311–ag(L); 08–312–ag(con) (2d Cir. Filed Jan. 17, 2008).

[4] DOE confirmed the standards and compliance dates promulgated in the June 2011 DFR in a notice of effective date and compliance dates published in the **Federal Register** on October 31, 2011 (''October 2011 notice''). 76 FR 67037. After publication of the October 2011 notice, the American Public Gas Association (''APGA'') sued DOE to invalidate the rule as it pertained to NWGFs and MHGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). On April 24, 2014, the Court granted a motion that approved a settlement agreement that was reached between DOE, APGA, and the various intervenors in the case, in which DOE agreed to a remand of the non-weatherized gas furnace and mobile home gas furnace portions of the June 2011 DFR in order to conduct further notice-and-comment rulemaking. Accordingly, the Court's order vacated the June 2011 DFR in part (*i.e.,* those portions relating to non-weatherized gas furnaces and mobile home gas furnaces) and remanded to the agency for further rulemaking. NWGFs and MHGFs are being addressed in a separate rulemaking proceeding (*see* Docket No. EERE–2014–BT–STD–0031).

TABLE II.1—FEDERAL AFUE STANDARDS FOR OIL, ELECTRIC, AND WEATHERIZED GAS FURNACES

Product class	AFUE (percent)	Compliance date
Non-weatherized oil-fired furnaces (not including mobile home furnaces)	83	May 1, 2013.
Mobile home oil-fired furnaces	75	September 1, 1990.
Weatherized gas furnaces	81	January 1, 2015.
Weatherized oil-fired furnaces	78	January 1, 1992.
Electric furnaces	78	January 1, 1992.

TABLE II.2—FEDERAL STANDBY MODE AND OFF MODE STANDARDS FOR OIL AND ELECTRIC FURNACES

Product class	Maximum standby mode electrical power consumption, $P_{W,SB}$ (watts)	Maximum off mode electrical power consumption, $P_{W,OFF}$ (watts)	Compliance date
Non-weatherized oil-fired furnaces (including mobile home furnaces)	11	11	May 1, 2013.
Electric furnaces	10	10	May 1, 2013.

2. History of Standards Rulemakings for Consumer Furnaces

Amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (''NAECA''; Pub. L. 100–12) established EPCA's original energy conservation standards for furnaces, consisting of the minimum AFUE levels for mobile home furnaces and for all other furnaces except ''small'' gas furnaces. (42 U.S.C. 6295(f)(1)–(2)) The original standards established a minimum AFUE of 75 percent for mobile home furnaces and 78 percent for all other furnaces. Pursuant to authority conferred under 42 U.S.C. 6295(f)(1)(B), DOE subsequently adopted a mandatory minimum AFUE level for ''small'' furnaces through a final rule published in the **Federal Register** on November 17, 1989 (''the November 1989 Final Rule''). 54 FR 47916. The standards established by NAECA and the November 1989 Final Rule for ''small'' gas furnaces are still in effect for MHOFs, WOFs, and EFs.

Pursuant to EPCA, DOE was required to conduct two rounds of rulemaking to consider amended energy conservation standards for all consumer furnaces, and an additional round of rulemaking for mobile home furnaces. (42 U.S.C. 6295(f)(4)(A), (B), and (C)) In satisfaction of the first round of amended standards rulemaking under 42 U.S.C. 6295(f)(4)(B), on November 19, 2007, DOE published in the **Federal Register** a final rule (''November 2007 Final Rule'') that revised the standards for most furnaces but left them in place for two product classes (*i.e.,* MHOFs and WOFs).[5] The standards amended in the November 2007 Final Rule were to apply to furnaces manufactured or imported on and after November 19, 2015. 72 FR 65136 (Nov. 19, 2007). The energy conservation standards in the November 2007 Final Rule consist of a minimum AFUE level for each of the six classes of furnaces. *Id.* at 72 FR 65169. Based on the market analysis for the November 2007 Final Rule and the standards established under that rule, the November 2007 Final Rule eliminated the distinction between furnaces based on their certified input capacity, (*i.e.,* the standards applicable to ''small'' furnaces were established at the same level and as part of their appropriate class of furnace generally). *Id.*

Following DOE's adoption of the November 2007 Final Rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (''Second Circuit'') to invalidate the rule. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008). The petitioners asserted that the standards for furnaces promulgated in the November 2007 Final Rule did not reflect the ''maximum improvement in energy efficiency'' that ''is technologically feasible and economically justified'' under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 Final Rule would be vacated, but it indicated that DOE would revisit its initial conclusions outlined in the November 2007 Final Rule in a subsequent rulemaking action. DOE also agreed that the final rule in that subsequent rulemaking action would address both regional standards for furnaces and the effects of alternate standards on natural gas prices. The Second Circuit granted DOE's motion on April 21, 2009. DOE notes that the Second Circuit's order did not vacate the energy conservation standards set forth in the November 2007 Final Rule, and during the remand, the standards went into effect as originally scheduled.

On June 27, 2011, DOE published a direct final rule (''DFR'') in the **Federal Register** (''June 2011 DFR'') revising the energy conservation standards for residential furnaces pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.* 76 FR 37408. In the June 2011 DFR, DOE considered the amendment of the same six product classes considered in the November 2007 Final Rule analysis plus electric furnaces. As discussed previously, the June 2011 DFR amended the existing AFUE energy conservation standards for NWGFs, MHGFs, and NWOFs and amended the compliance date (but left the existing standards in place) for WGFs. The June 2011 DFR also established electrical standby mode and off mode energy conservation standards for NWGFs, MHGFs, NWOFs, MHOFs, and EFs. DOE confirmed the standards and compliance dates promulgated in the June 2011 DFR in a notice of effective date and compliance

[5] The November 2007 Final Rule adopted amended standards for ''oil-fired furnaces'' generally. However, on July 28, 2008, DOE published a technical amendment final rule in the **Federal Register** that clarified that the amended standards adopted in the November 2007 Final Rule for oil-fired furnaces did not apply to mobile home oil-fired furnaces and weatherized oil-fired furnaces; rather they were only applicable for non-weatherized oil-fired furnaces. 73 FR 43611, 43613 (July 28, 2008).

dates published in the **Federal Register** on October 31, 2011 (''October 2011 Notice''). 76 FR 67037. The November 2007 Final Rule and the June 2011 DFR represented the first and the second rounds, respectively, of the two rulemakings required under 42 U.S.C. 6295(f)(4)(B)–(C) to consider amending the energy conservation standards for consumer furnaces.

The June 2011 DFR and October 2011 Notice of effective date and compliance dates amended, in relevant part, the AFUE energy conservation standards and compliance dates for three product classes of consumer furnaces (*i.e.,* NWGFs, MHGFs, and NWOFs).[6] The existing AFUE standards were left in place for three classes of consumer furnaces (*i.e.,* WOFs, MHOFs, and EFs). For WGFs, the existing standard was left in place, but the compliance date was amended. Electrical standby mode and off mode energy consumption standards were established for non-weatherized gas and oil-fired furnaces (including mobile home furnaces) and EFs. Compliance with the energy conservation standards promulgated in the June 2011 DFR was to be required on May 1, 2013, for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces, and on January 1, 2015, for weatherized furnaces. 76 FR 37408, 37547–37548 (June 27, 2011); 76 FR 67037, 67051 (Oct. 31, 2011). The amended energy conservation standards and compliance dates in the June 2011 DFR superseded those standards and compliance dates promulgated by the November 2007 Final Rule for NWGFs, MHGFs, and NWOFs. Similarly, the amended compliance date for WGFs in the June 2011 DFR superseded the compliance date in the November 2007 Final Rule.

Following DOE's adoption of the June 2011 DFR, the American Public Gas Association (''APGA'') filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') to invalidate the DOE rule as it pertained to NWGFs and MHGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). The parties to the litigation engaged in settlement negotiations, which ultimately led to filing of an unopposed motion on March 11, 2014, seeking to vacate DOE's rule in part and to remand to the agency for further rulemaking.

On April 24, 2014, the Court granted the motion and ordered that the standards established for NWGFs and MHGFs be vacated and remanded to DOE for further rulemaking. As a result, the standards established by the June 2011 DFR for NWGFs and MHGFs did not go into effect, and, thus, required compliance with the standards established in the November 2007 Final Rule for these products began on November 19, 2015. As stated previously, the AFUE standards for WOFs, MHOFs, and EFs were unchanged, and as such, the original standards for those product classes remain in effect. Further, the amended standard for NWOFs was not subject to the Court order and went into effect as specified in the June 2011 DFR. The AFUE standards currently applicable to all residential furnaces,[7] including the five product classes for which DOE is analyzing amended standards in this NOPD, are set forth in DOE's regulations at 10 CFR 430.32(e)(1)(ii) and (iii).

On January 28, 2022, DOE published in the **Federal Register** a request for information (''January 2022 RFI'') to initiate a review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for oil, electric, and weatherized gas consumer furnaces. 87 FR 4513. On November 29, 2022, DOE published in the **Federal Register** a notice of availability of a preliminary technical support document (''TSD'') (''the November 2022 Preliminary Analysis'') that presented initial technical analyses in the following areas: (1) market and technology; (2) screening; (3) engineering; (4) markups to determine product price; (5) energy use; (6) life-cycle cost (''LCC'') and payback period (''PBP''); and (7) national impacts. 87 FR 73259. DOE held a public meeting webinar on December 19, 2022 in order to receive public input and information related to the November 2022 Preliminary Analysis for the subject furnaces.

DOE received comments in response to the November 2022 Preliminary Analysis from the interested parties listed in Table II.3.

TABLE II.3—NOVEMBER 2022 PRELIMINARY ANALYSIS PUBLIC COMMENTS

Commenter(s)	Reference in this NOPD	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	23	Manufacturer Trade Association.
American Gas Association	AGA	*28	Utility Trade Association.
American Gas Association, American Public Gas Association, National Propane Gas Association, Spire Inc., Spire Missouri Inc.	Joint Commenters	24	Utilities and Utility Trade Associations.
Appliance Standards Awareness Project, American Council for an Energy-Efficiency Economy, Consumer Federation of America, Natural Resources Defense Council.	Joint Advocates	22	Efficiency Advocacy Organizations.
Johnson Controls International	JCI	25	Manufacturer.
Lennox International	Lennox	26	Manufacturer.
New York State Energy Research and Development Authority	NYSERDA	19	State Agency.
Northwest Energy Efficiency Alliance	NEEA	21	Efficiency Advocacy Organization.

*Comment No. 28 corresponds to the transcript for the webinar held on December 19, 2022. These commenters made oral comments during the public meeting that are summarized and discussed in this document.

[6] For NWGFs and MHGFs, the standards were amended to a level of 80-percent AFUE nationally with a more-stringent 90-percent AFUE requirement in the Northern Region. For NWOF furnaces, the standard was amended to 83-percent AFUE nationally. 76 FR 37408, 37410 (June 27, 2011).

[7] DOE divides consumer furnaces into seven classes for the purpose of setting energy conservation standards: (1) NWGFs, (2) MHGFs, (3) WGFs, (4) NWOFs, (5) MHOFs, (6) WOFs, and (7) electric furnaces. 10 CFR 430.32(e)(1)(ii). As noted previously, DOE has been analyzing amended standards for NWGFs and MHGFs as part of a separate, ongoing rulemaking (*see* Docket No. EERE–2014–BT–STD–0031).

Any oral comments provided during the webinar that are not substantively the same as those presented in written comments are summarized and cited separately. throughout this NOPD. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[8]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR and NOPR stages for an energy conservation standards rulemaking.

Section 6(a)(2) of the Process Rule states that if DOE determines it is appropriate to proceed with a rulemaking, for the preliminary stages of a rulemaking to issue or amend an energy conservation standard, DOE will undertake 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 73529 (Nov. 29, 2022)), DOE did not publish a framework document in conjunction with the preliminary analysis. DOE notes, however, that chapter 2 of the preliminary technical support document that accompanied the preliminary analysis—titled *Analytical Framework, Comments from Interested Parties, and DOE Responses*—describes the general analytical framework that DOE uses in evaluating and developing potential amended energy conservation standards.[9] Further, DOE provided an overview of the analysis it would use to evaluate new or amended energy conservation standards in the January 2022 RFI (*see* 87 FR 4513 (Jan. 28, 2022)). As such, publication of a separate Framework Document would be largely redundant of previously published documents.

III. General Discussion and Rationale

DOE developed this proposed determination after a review of the market for the subject furnaces, including product listings in the DOE Compliance Certification Database (''CCD'') database.[10] DOE also considered comments, data, and information from interested parties that represent a variety of interests. This NOPD addresses issues raised by these commenters.

A. General Comments

1. Comments Supporting Amended Standards

In response to the November 2022 Preliminary Analysis, several commenters expressed their support of amended energy conservation standards for oil, electric, and weatherized gas consumer furnaces.

The Joint Advocates stated that DOE's preliminary analysis demonstrates that condensing-level standards for NWOFs are technologically feasible and could result in significant consumer savings. The Joint Advocates further commented that fuel regulations in many northern States have helped to reduce the sulfur content in heating oil, adding that this results in condensing NWOFs becoming technologically feasible and commercially available. (Joint Advocates, No. 22 at p. 1) The Joint Advocates pointed out that Adams Manufacturing commented on the January 2022 RFI in support of a 95-percent AFUE standard for NWOFs.[11] (Joint Advocates, No. 22 at p. 2)

NYSERDA stated support for DOE increasing the furnace standards, particularly for oil furnaces and for standby and off modes. NYSERDA argued that there are cost-effective and beneficial energy and associated greenhouse gas savings available through improvements to electric, weatherized gas, and particularly oil furnaces. (NYSERDA, No. 19 at p. 1)

As part of the rulemaking process, DOE carefully considers the benefits and burdens of amended energy conservation standards to determine whether such standards are the maximum standard levels that are technologically feasible and economically justified and would conserve a significant amount of energy, as required by EPCA (*see* 42 U.S.C. 6295(o)(2)–(3)). Section IV of this document outlines DOE's approach to analyzing various potential amended energy conservation standard levels, and section V of this document provides the results of those analyses, as well as a detailed explanation of DOE's weighing of the benefits and burdens. Based upon its analysis and consideration of the relevant statutory criteria, DOE is proposing not to amend the existing standards for oil, electric, and weatherized gas furnaces at this time. The rationale for DOE's proposed determination is discussed in detail in section V of this document.

2. Comments Opposing Amended Standards

In response to the November 2022 Preliminary Analysis, several commenters expressed opposition to amended energy conservation standards for oil, electric, and weatherized gas consumer furnaces.

The Joint Commenters stated that they are guided by the congressional mandate that appliance efficiency standards should not impose unjustified costs on consumers or deprive consumers of gas products that are suitable for their needs. The Joint Commenters stated that such standards are not authorized by statute and would be harmful to fuel gas providers and the consumers they serve. (Joint Commenters, No. 24 at p. 2) AHRI commented that DOE should adopt a no-new-standards determination for mobile home oil-fired and non-weatherized oil-fired furnaces, given the burden placed on manufacturers to meet more-stringent standards that will provide insubstantial energy savings. (AHRI, No. 23 at pp. 3–4)

AHRI also commented that DOE should adopt a no-new-standards determination for weatherized gas-fired furnaces. The commenter argued that DOE should adopt the same determination for consumer weatherized gas furnaces as was done for commercial warm air furnaces, given that they are technologically similar. AHRI and Lennox commented that a move to an AFUE greater than 90 percent for weatherized gas furnaces is unjustified, adding that EL 1 showed a 9.1-year payback period and 45.8 percent of consumers experiencing a net cost. (AHRI, No. 23 at p. 3; Lennox, No. 26 at p. 2)

Lennox urged DOE to consider the cumulative regulatory burden of all ongoing rulemakings on furnace manufacturers. (Lennox, No. 26 at p. 9) The commenter also stated that weatherized gas, non-weatherized oil, and electric furnaces are niche products and total less than 10 percent of the consumer furnace market. More specifically, Lennox stated that weatherized gas furnaces comprise approximately 7 percent of the market, and non-weatherized oil and electric furnaces each account for less than 1 percent of the market. (Lennox, No. 26 at p. 1) Lennox acknowledged that

[8] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2021–BT–STD–0031, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[9] The preliminary technical support document is available at *www.regulations.gov/document/EERE-2021-BT-STD-0031-0011*.

[10] U.S. Department of Energy Compliance Certification Database. (Available at: *www.regulations.doe.gov/certification-data/*) (Last accessed Sept. 1, 2023).

[11] The comment from Adams Manufacturing, Co. in response to the January 2022 RFI can be found at: *www.regulations.gov/comment/EERE-2021-BT-STD-0031-0010*.

technologies exist that could advance the efficiency of gas and oil furnaces included in the preliminary TSD. However, Lennox stated that consumer cost and utility issues render more-stringent standards unjustified for the subject oil and gas furnaces. In particular, for weatherized gas products, Lennox recommended that DOE find that a no-new-standards determination is warranted for these product categories. (*Id.* at p. 6)

Lennox stated that the market adoption of condensing weatherized furnaces has been minimal. Lennox estimated that condensing weatherized furnaces are at less than 0.12 percent of the weatherized gas market and that there is no indication of growth in the market. Therefore, Lennox surmised that condensing efficiency levels would not be appropriate for DOE to consider as a basis for a national efficiency standard for weatherized gas furnaces and that DOE should not seek to mandate WGF condensing technology. (Lennox, No. 26 at p. 7)

Lennox stated that many consumers have been adversely impacted by the ongoing COVID pandemic and high inflation, particularly consumers who might already be struggling to afford new furnace equipment. Accordingly, Lennox argued that DOE increasing furnace equipment costs with new efficiency standards is not economically justified at this juncture. (Lennox, No. 26 at p. 2)

In response, as discussed in section II.A of this document, DOE must periodically review its already established energy conservation standards for consumer furnaces no later than six years from the issuance of a final rule establishing or amending a standard for consumer furnaces. This six-year-lookback provision requires that DOE publish either a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) As part of the rulemaking process, DOE carefully considers the benefits and burdens of amended standards to determine whether the amended standards are the maximum standard levels that are technologically feasible and economically justified and would conserve a significant amount of energy, as required by EPCA (*see* 42 U.S.C. 6295(o)(2)–(3)). Section IV of this document outlines DOE's approach to analyzing various potential amended standard levels, and section V of this document provides the results of those analyses. Section V also provides a detailed explanation of DOE's weighing of the benefits and burdens and the rationale for proposing not to amend standards for oil, electric, and weatherized gas furnaces at this time. Regarding DOE's consideration of cumulative regulatory burden, DOE is not proposing to amend the energy conservation standards for oil, electric, and weatherized gas furnaces, so, therefore, the Department does not expect this rulemaking to contribute to the cumulative regulatory burden of manufactures.

3. Standby Mode and Off Mode

As discussed in section II.A of this document, EPCA requires any final rule for new or amended energy conservation standards promulgated after July 1, 2010 to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3))

''Standby mode'' and ''off mode'' energy use are defined in the DOE test procedure for residential furnaces and boilers (*i.e.,* ''Uniform Test Method for Measuring the Energy Consumption of Consumer Furnaces Other Than Boilers,'' 10 CFR part 430, subpart B, appendix N; ''appendix N''). In that test procedure, DOE defines ''standby mode'' as any mode in which the furnace is connected to a mains power source and offers one or more of the following space heating functions that may persist: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including thermostat or remote control), internal or external sensors, and/or timer; and (b) Continuous functions, including information or status displays or sensor based functions. 10 CFR part 430, subpart B, appendix N, section 2. ''Off mode'' for consumer furnaces is defined as a mode in which the furnace is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. The existence of an off switch in off position (a disconnected circuit) is included within the classification of off mode. 10 CFR part 430, subpart B, appendix N, section 2. An ''off switch'' is defined as the switch on the furnace that, when activated, results in a measurable change in energy consumption between the standby and off modes. 10 CFR part 430, subpart B, appendix N, section 2. Currently, the standby mode and off mode energy conservation standards for NWOFs and EFs are outlined in 10 CFR 430.32 (e)(1)(iii) and are shown in Table II.2 of this document. Compliance with the Federal standards for standby mode and off mode electricity consumption for NWOFs, MHOFs, and EFs, as measured by standby power consumption in watts (''$P_{W,SB}$'') and off mode power consumption in watts (''$P_{W,OFF}$''), was required on May 1, 2013.

In the November 2022 Preliminary Analysis, DOE analyzed amended standby/off mode standards for NWOFs, MHOFs and EFs. DOE did not consider amended standby mode and off mode standards for WGFs and WOFs, because DOE has previously concluded in a direct final rule published in the **Federal Register** on June 27, 2011 that these products are packaged with either an air conditioner or heat pump and that the standards for those products, specified in terms of power consumption in watts and Seasonal Energy Efficiency Ratio (''SEER''), already account for the standby mode and off mode energy consumption for these classes of furnaces. 76 FR 37408, 37433. Based on market analysis conducted for the November 2022 Preliminary Analysis, DOE tentatively concludes that WGFs and WOFs continue to be packaged with an air conditioner or heat pump.

In the analysis for the November 2022 Preliminary Analysis, DOE established the baseline for NWOFs, MHOFs, and EFs as the current Federal standby mode and off mode standards (see Table II.2). DOE also defined and identified baseline components as those that consumed the most electricity during standby mode and off mode operation. For intermediate efficiency levels, DOE utilized a design-option approach to identify design options that could be applied to the baseline design to reduce standby mode and off mode energy consumption. Above the baseline efficiency level, DOE implemented design options in the order of incremental energy savings relative to baseline until all available design options were employed (*i.e.,* at a max-tech level). DOE identified two design options between the baseline and max-tech design that were used as the basis for intermediate standby mode and off mode design options. Specifically, DOE replaced the linear transformer found in models at the baseline with a low-loss transformer (''LL–LTX'') for the first intermediate efficiency level and replaced the linear power supply found in baseline models with a switching mode power supply (''SMPS'') for the second intermediate efficiency level.

The max-tech standby mode and off mode efficiency level in the November 2022 Preliminary Analysis was based on a combination of the two design options that were analyzed for the intermediate efficiency levels. To reach max-tech, DOE analyzed using an LL–LTX in combination with an SMPS to reach the

minimum standby mode or off mode power consumption (without eliminating other consumer- or performance-related electronic features). For this design option, a transformer is only needed to step down the voltage for the thermostat because the SMPS is able to step down the voltage for the other components of the furnace. As such, a smaller, lower-cost LL–LTX is used at the max-tech level, as compared to the LL–LTX used at EL 1 (*i.e.,* the first intermediate efficiency level).

In response to the November 2022 Preliminary Analysis, Lennox commented that it is not aware of new or improved technology options regarding standby mode and off mode energy use beyond those previously identified that significantly impact the range of efficiencies for the product covered in this rulemaking. (Lennox, No. 26 at p. 4) However, Lennox also pointed out that consumers, utilities, third-party aggregators, and regulators through programs such as EPA ENERGY STAR are looking to further deploy features that enable installation verification, ongoing monitoring, diagnostics, and prognostic features that can save significantly more energy than *de minimis* standby power limits achieve. (*Id.*)

AHRI and Lennox stated that the following functions and components utilize the furnace's power supply in the on, standby, and off modes: indoor and outdoor air conditioner (''AC'')/heat pump (''HP'') Motors (''ECM''); AC/HP outdoor control board; heat pump defrost control; indoor and outdoor electronic expansion valve; heat pump reversing valve; zoning systems; UV germicidal light; humidifier; communicating controls that aid in proper commissioning, system performance monitoring and reporting, identification of faults, and consumer interface; temperature sensors; air pressure sensors; refrigerant pressure sensors; gas pressure sensors; and proprietary diagnostic-prognostic sensors. (AHRI, No. 23, at p. 2; Lennox, No. 26 at p. 5) Lennox further added that thermostats utilize the furnace's power supply in the on, standby, and off modes. (Lennox, No. 26 at p. 5) AHRI added that integrated furnace controls, gas valves, and combustion air inducers utilize the furnace power in on, standby, and off modes. (AHRI, No. 23, at p. 2) AHRI and Lennox commented that additional safety-related sensors are being considered for furnaces that could further render more-stringent standby power limits impractical, including refrigerant leak detection mitigation sensors and CO sensors. (Lennox, No. 26 at p. 5; AHRI, No. 23, at p. 2) Lennox also added CO_2 sensors to the list of potential future diagnostic features and stated that this list is likely to grow over time. (Lennox, No. 26 at p. 5)

Lennox commented that increased stringency in standards for standby power levels would inhibit other innovations that save energy and benefit consumers. Lennox further stated that increased stringency would also inhibit implementation of additional safety features. (Lennox, No. 26 at p. 2) In addition, Lennox stated that the energy savings for standby mode and off mode standards for all of the products considered in this rulemaking do not meet the DOE criteria of significant energy savings. (*Id.*) AHRI commented that DOE should consider the standby mode and off mode requirements of higher technology features when evaluating the standby mode and off mode efficiency levels. (AHRI, No. 23 at p. 3) AHRI and Lennox commented that overly stringent standby mode and off mode standards would inhibit the integration of smart communicating controls, installation and diagnostic features, and zoning that can enable much larger energy savings than the minor savings achieved by the standby power limit itself. Lennox stated that these advanced features have entered the market for fully featured communicating products and require more standby mode and off mode energy than the baseline products. (Lennox, No. 26 at p. 4; AHRI, No. 23 at p. 3)

Lennox and AHRI agreed that standby mode and off mode power consumption for WGFs that are part of a single-package air conditioner or heat pump are captured in the $P_{W,OFF}$ and SEER metrics for these products. (Lennox, No. 26 at p. 3; AHRI, No. 23 at p. 4) Lennox stated that the current DOE metrics capture the standby energy regardless of the mode of operation. (Lennox, No. 26 at p. 3) Lennox commented that it is not aware of seasonal differences in standby mode and off mode energy consumption. Further, Lennox commented that a condensing standard for WGF may force additional factory- or field-installed components to prevent freezing (*i.e.,* heat tape or other) of the condensate system, which may increase standby energy consumption in heating mode. (Lennox, No. 26 at p. 3)

AHRI commented that an 8.5 W maximum standard for standby mode and off mode power does not allow for the addition of the aforementioned communication, diagnostic, and safety features. (AHRI, No. 23 at p. 2) AHRI recommended that DOE re-evaluate the necessary power draw for communication and safety-related features and the max-tech level based upon the use of a 20 VA LL–LTX transformer and SMPS to meet these utilities. (*Id.* at p. 3) AHRI commented that a 20 VA transformer cannot supply the needs of all interconnected controls for all types of systems. AHRI added that if the transformer cannot power the necessary internal functions, then DOE must reconsider the proposed 8.5-watt standby power limit and whether the 11-watt baseline is sufficient. AHRI further commented that if DOE must go higher than 11 watts, DOE may need to make allowance in future test procedures so that the effects of safety and other control measures do not count against the proposed 11-watt limit. (*Id.*)

AHRI commented that an incorrectly set minimum standard will drive connected products such as thermostats, WIFI controls, *etc.* to use add-on power supplies and cause an additional economic burden on consumers, asserting that this would defeat the purpose of the proposed maximum watts limit. AHRI commented that there are already auxiliary power supplies on the market for thermostats and other devices. (*Id.* at p. 3)

NYSERDA commented that the technology options for standby mode that rely on switching mode power supply with a low-loss linear transformer have been considered by DOE for several years and are anticipated to be transferable across furnace types, including the oil and electric furnaces addressed in this rulemaking. NYSERDA explained that as switch-mode power supply and low-loss linear transformers become the standard for much of the furnace market, it becomes more feasible for those technologies to apply to oil and electric furnaces as well. (NYSERDA, No. 19 at p. 2)

NYSERDA recommended that DOE propose the max-tech levels for standby mode and off mode at the NOPR stage. NYSERDA explained that, as this rulemaking is finalized, the broader furnace manufacturing industry is anticipated to evolve toward technology for standby mode that relies on switching mode power supply with a low-loss linear transformer. (NYSERDA, No. 19 at p. 2)

After considering this feedback, DOE understands that typical and baseline levels of power consumption of consumer furnaces in standby mode or off mode are likely to increase in the future as manufacturers continue to build increasingly complex controls into consumer furnaces, and that many of the likely changes are related to features such as safety sensors or to other improvements in functionality that

would provide utility for the consumer. Based on these comments, DOE has found that there is some degree of uncertainty that exists with respect to the appropriateness of the standby mode/off mode efficiency levels analyzed in the November 2022 Preliminary Analysis—particularly for products that are in development but also possibly in some products already on the market. There is also uncertainty related to the potential impacts that standby mode and off mode power consumption standards could have on overall system energy consumption and consumer utility. Consequently, DOE has determined that it lacks the necessary information to amend the standby mode and off mode standards at this time. Particularly, since some of the functionalities at issue could have significant safety or energy-savings benefits, DOE does not wish to stymie such developments through well-intentioned but ultimately counterproductive standby mode/off mode standards. Instead, DOE needs to have a better understanding of the legitimate power consumption needs of the subject furnaces when operating in standby mode and off mode. Although DOE remains cognizant of the relevant requirements of 42 U.S.C. 6295(gg)(3), DOE has concluded that it does not currently have the requisite evidence to support amended standby mode and off mode standards under the applicable statutory criteria in EPCA. Therefore, DOE is not proposing to amend the standby mode/off mode power standards for NWOFs, MHOFs, and EFs this time, but instead, DOE will continue to investigate these issues and may consider such standards in a future rulemaking.

B. Scope of Coverage and Product Classes

This proposed determination covers certain product classes of consumer furnaces (*i.e.,* ones for oil, electric, and weatherized gas furnaces). A consumer ''furnace'' is defined as a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) Is designed to be the principal heating source for the living space of a residence;

(B) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low-pressure steam or hot water boiler; and

(D) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low-pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

10 CFR 430.2. The scope of coverage is discussed in further detail in section IV.A.1 of this document.

When evaluating and establishing/amending energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. 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. (42 U.S.C. 6295(q)) The product classes for this proposed determination are discussed in further detail in section IV.A.4 of this document.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to quantify the efficiency of their product and as the basis for certifying to DOE that their product complies with energy conservation standards and when making representations to the public regarding the energy use or efficiency of the product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)) Similarly, DOE must use these test procedures to determine whether the product complies with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) DOE's current energy conservation standards for consumer furnaces are expressed in terms of AFUE for all furnace product classes (*i.e.,* active mode) and, for NWOFs, MHOFs, and electric furnace product classes, also in terms of $P_{W,SB}$ and $P_{W,OFF}$ (*i.e.,* standby mode and off mode). (*See* 10 CFR 430.32(e)(1))

The test procedure for determining AFUE, $P_{W,SB}$, and $P_{W,OFF}$ is established at 10 CFR part 430, subpart B, appendix N. AFUE is an annualized fuel efficiency metric that accounts for fossil fuel consumption in active, standby, and off modes. $P_{W,SB}$ and $P_{W,OFF}$ are measurements of the standby mode and off mode electrical power consumption, respectively, in watts. The test procedure for consumer furnaces was last amended by a final rule published in the **Federal Register** on January 15, 2016 (''January 2016 TP Final Rule''). 81 FR 2628.[12]

The revisions to the consumer furnaces test procedure in the January 2016 TP Final Rule included:

- Clarification of the electrical power term ''PE'';
- Adoption of a smoke stick test for determining use of minimum default draft factors;
- Allowance for the measurement of condensate under steady-state conditions;
- Reference to manufacturer's installation and operation manual and clarifications for when that manual does not specify test set-up;
- Specification of duct-work requirements for units that are installed without a return duct;
- Specification of testing requirements for units with multi-position configurations; and
- Revision of the requirements regarding AFUE reporting precision.

81 FR 2628, 2629–2630 (Jan. 15, 2016).

The changes in the January 2016 TP Final Rule were mandatory for representations of furnace efficiency made on or after July 13, 2016. As such, the most current version of the test procedure (published in January 2016) has now been in place for several years.

D. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, 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 determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be

[12] On March 13, 2023, DOE published in the **Federal Register** a test procedure final rule for consumer boilers, which are a type of furnace under EPCA (*see* 42 U.S.C. 6291(23)) but are not included within the scope of this rulemaking (*see* section IV.A.1 of this document). 88 FR 15510. This test procedure final rule separated the test method for consumer boilers from the test method for other types of furnaces and moved the boilers test method to a new appendix EE to 10 CFR part 430, subpart B. Accordingly, it amended appendix N so as to remove provisions applicable only to boilers, but it did not materially change the test method for the oil, electric, and weatherized gas furnaces that are the subject of this rulemaking.

technologically feasible. 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(i) and 7(b)(1).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5). Section IV.A.3 of this document discusses the results of the screening analysis for oil, electric, and weatherized gas furnaces, particularly the design options DOE considered, those it screened out, and those that are the basis for the potential standards considered in this proposed determination.

2. Maximum Technologically Feasible Levels

As when DOE proposes to adopt a new or amended standard for a type or class of covered product, in this NOPD analysis, DOE must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for the product under consideration. (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 oil, electric, and weatherized gas furnaces, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.B.1.c of this proposed determination.

E. Cost-Effectiveness

In making a determination of whether amended energy conservation standards are needed, EPCA requires DOE to consider the cost-effectiveness of amended standards in the context of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)(C); 42 U.S.C. 6295(o)(2)(B)(i)(II))

In determining cost-effectiveness of potential amended standards for oil, electric, and weatherized gas furnaces, DOE conducted LCC and PBP analyses that estimate the costs and benefits to users from those potential standards. To further inform DOE's consideration of the cost-effectiveness of potential amended standards, DOE considered the NPV of total costs and benefits estimated as part of the NIA. 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. The results of this analysis are discussed in section V.C.2 of this NOPD.

F. Energy Savings

1. Determination of Savings

For each efficiency level (''EL'') evaluated, DOE projected anticipated energy savings from application of the EL to the oil, electric, and weatherized gas furnace purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2030–2059). The savings are measured over the entire lifetime of the oil, electric, and weatherized gas furnaces purchased in the previous 30-year period. DOE quantified the energy savings attributable to each EL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards. DOE used its NIA spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for oil, electric, and weatherized gas furnaces. The NIA spreadsheet model (described in section IV.G of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES 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 full-fuel-cycle (''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.[13] 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.G of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A)) 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 most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. The significance of energy savings is further discussed in section V.B.1 of this NOPD.

G. Additional Considerations

Pursuant to EPCA, absent DOE publishing a notification of determination that energy conservation standards for the subject furnaces do not need to be amended, DOE must issue a NOPR that includes new proposed standards. (42 U.S.C. 6295(m)(1)(B)) The new proposed standards in any such NOPR must be based on the criteria established under 42 U.S.C. 6295(o) and follow the procedures established under 42 U.S.C. 6295(p). (42 U.S.C. 6295(m)(1)(B)) The criteria in 42 U.S.C. 6295(o) require that standards be designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and

[13] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

[14] The numeric threshold for determining the significance of energy savings established in a final rule published in the **Federal Register** on February 14, 2020 (85 FR 8626, 8670–8672) was subsequently rescinded through a final rule published in the **Federal Register** on December 13, 2021 (86 FR 70892, 70901–70906).

consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges for, or maintenance expenses of the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed determination with regard to oil, electric, and weatherized gas furnaces. Separate subsections address each component of DOE's analyses. DOE used several analytical tools to estimate the impact of potential energy conservation standards. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and net present value of total consumer costs and savings expected to result from potential energy conservation standards. These spreadsheet tools are available on the website: *www.regulations.gov/docket/EERE-2021-BT-STD-0031.*

The Joint Commenters stressed the importance of implementing the recommendations of the recent National Academies of Sciences, Engineering, and Medicine (''NAS'') report into all appliance rulemakings. Specifically, the Joint Commenters highlighted three recommendations from the report that they argued should be implemented in rulemakings impacting WGFs: (1) DOE should pay greater attention to the justification for the standards, adding that DOE should attempt to find significant failures of private markets or irrational behavior by consumers in the no-new-standards case to conclude that the standards are economically justified; (2) DOE should place greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap in DOE's analysis; and (3) DOE should give greater attention to a broader set of potential market failures on the supply side, further commenting that this would include not just how standards might reduce the number of competing firms but also how they might impact price discrimination, technological diffusion, and collusion. The Joint Commenters suggested DOE should address these recommendations before analyzing whether new efficiency standards are warranted. (Joint Commenters, No. 24 at pp. 2–3)

In response, DOE is addressing the recommendations of the NAS report in a separate rulemaking in parallel with other ongoing rulemakings, including this oil, electric, and weatherized gas furnace NOPD. As discussed in section V.C of this document, DOE is tentatively proposing that standards do not need to be amended, and the Department has made this tentative determination consistent with EPCA's requirements, including evaluation of economic justification of standards, and applicable Executive orders.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this proposed determination include: (1) a determination of the scope and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of consumer furnaces. The key findings of DOE's market assessment are summarized in the following sections.

1. Scope of Coverage

In this analysis, DOE relied on the definition of a furnace in 10 CFR 430.2, which defines a consumer ''furnace'' as a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) Is designed to be the principal heating source for the living space of a residence;

(B) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low-pressure steam or hot water boiler; and

(D) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low-pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

Any product meeting the definition of a ''furnace'' is included in DOE's scope of coverage. In the analysis for this NOPD, DOE focused only on oil, electric, and weatherized gas furnaces. Non-weatherized gas furnaces and mobile home gas furnaces are considered in a separate rulemaking.[15]

a. Electric Furnaces

A basic electric furnace comprises an electric resistance heating element and blower assembly. (Additionally, there are products that include electrically-powered heat pumps, but these are separately covered products not addressed here.) The electric resistance heating elements of electric furnaces are highly efficient, and the efficiency of these units already approaches 100 percent. DOE is unaware of any technology options that can improve the efficiency of electric furnaces, so DOE has tentatively determined that more-stringent standards for electric furnaces would not be technologically feasible. Therefore, DOE anticipates that the energy savings potential from amended standards for EFs would be minimal. Consequently, DOE did not consider amended AFUE standards for electric furnaces in the current analysis.

b. Weatherized Oil-Fired Furnaces

DOE is not aware of any WOFs on the market, and, therefore, DOE did not analyze amended standards for that product class. DOE has tentatively determined that because there are no WOFs on the market, there would be no potential energy savings from amended standards.

c. Fuel-Fired Heat Pumps

NEEA commented that DOE should consider fuel-fired heat pumps within the broader WGF product category by updating the definition of ''central forced-air furnace'' in the Code of Federal Regulations. (NEEA, No. 21 at p. 1) NEEA argued that fuel-fired heat

[15] *See* Docket No. EERE–2014–BT–STD–0031 which can be accessed at *www.regulations.gov.*

pumps with a heat input rate of less than 225,000 Btu per hour meet all the criteria in the EPCA definition for a residential ''furnace'' with the exception that the terms, ''electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low-pressure steam or hot water boiler'' do not currently cover fuel-fired heat pumps. NEEA commented that DOE has the authority to change those definitions and stated that redefining ''forced-air central furnace'' would allow fuel-fired heat pumps to be regulated under the energy conservation standards for oil, electric, and weatherized gas consumer furnaces. (*Id.* at p. 2) Specifically, NEEA suggested that DOE should change the definition of ''forced air central furnace'' to a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The combustion of gas or oil generates heat that is either transferred to the air within a casing by conduction through heat exchange surfaces or utilized to run a refrigeration cycle that transfers heat to the air and is circulated through the duct system by means of a fan or blower. NEEA commented that this definition covers the two main fuel-fired heat pump technologies: fuel-fired absorption heat pumps and engine-driven heat pumps. (*Id.*) NEEA also commented that weatherized fuel-fired heat pumps should be considered as another technology option within the WGF product category. NEEA requested that DOE consider all possible technology options for gas-fired furnaces to be on an even playing field. (*Id.* at p. 3)

NEEA argued that fuel-fired heat pumps are designed to replace existing furnaces and boilers without the need to update existing infrastructure and to provide flexibility for decarbonized fuels. However, NEEA stated that fuel-fired heat pumps are not direct replacements for heat pumps, since the primary fuel sources are different. (NEEA, No. 21 at p. 3) NEEA commented that a 2020 case study [16] of a pre-commercial residential fuel-fired heat pump prepared for DOE showed that the system can achieve over 140-percent AFUE, and field demonstrations show 36–43 percent fuel savings compared to a condensing furnace and 46–50 percent fuel savings compared to a non-condensing furnace. (*Id.*) NEEA further commented that the 2020 case study showed that there is significant potential in the residential market for a reasonably priced, gas-fired absorption heat pump product. (*Id.*)

NEEA encouraged DOE to consider the building energy simulation and comparison to field-derived results for fuel-fired heat pumps, published by Purdue University in 2021.[17] NEEA commented that this report demonstrates that fuel-fired heat pumps provided the lowest operating cost and highest carbon emissions savings compared to furnaces, boilers, electric heat pumps, and various water heating options. NEEA commented that fuel-fired heat pumps provide the same primary heating function as conventional fuel-to-air furnaces with the potential for significant energy savings. (*Id.*)

In response to the comments by NEEA, DOE notes that fuel-fired heat pumps do not meet the current definition of ''furnace,'' as they do not meet criteria (C) in the definition outlined in section IV.A of this document. As such, they were not considered in the scope of this analysis. Further, the current test procedure for consumer furnaces, as outlined in appendix N, does not include provisions for testing fuel-fired heat pumps. Therefore, DOE is not considering amending the consumer ''furnace'' definition to include these products at this time. However, DOE will continue to investigate fuel-fired heat pumps and may evaluate test procedure provisions for related to fuel-fired heat pumps in a future rulemaking.

2. Technology Options

DOE has identified the following components as technology options that have the potential to improve the AFUE rating of oil and weatherized gas furnaces:

- Condensing secondary heat exchanger
- Heat exchanger improvements
  - Increased heat exchanger surface area
  - Heat exchanger surface features
  - Heat exchanger baffles and turbulators
- Two-stage and modulating combustion
- Pulse combustion
- Premix burners
- Burner derating
- Insulation improvements
  - Increased jacket insulations
  - Advanced forms of insulation
- Off-cycle dampers
  - Electromechanical flue damper
  - Electromechanical burner inlet damper
- Direct venting
- Concentric venting
- Low-pressure, air-atomized oil burner
- High-static oil burner
- Delayed-action oil pump solendoid valve

These technology options are described in more detail of chapter 3 of the November 2022 Preliminary Analysis TSD.[18] As discussed in section IV.A.1.a of this document, DOE did not identify any technology options that would improve the AFUE of electric furnaces.

In response to the November 2022 Preliminary Analysis, AHRI, Lennox, and JCI commented that WGF accounts for a relatively small share of the overall furnace market (~7 percent). (AHRI, No. 23 at p. 5; Lennox, No. 26 at p. 1; JCI, No. 25 at p. 2) [19] AHRI and JCI stated that the maximum feasible AFUE for WGF is 81 percent. (AHRI, No. 23 at p. 5; JCI, No. 25 at p. 2)

JCI commented that further improvements in systems efficiency of WGFs would require the product class use of condensing technology. JCI commented that this change in the product offering is not practical and, based on observed market share, not justified due to system design and application constraints. (JCI, No. 25 at p. 2) JCI argued that the practical application of condensing WGFs creates condensation in the heat exchangers within the unit, which is not readily drained. JCI added that the retained condensate will freeze in the off cycle, preventing further operation of the furnace. (*Id.)*

Lennox stated that applicable furnace technology has not significantly improved to overcome barriers to deploying higher-efficiency noncondensing and condensing technologies that would justify more-stringent AFUE standards for WGFs. (Lennox, No. 26 at p. 4)

In response to comments regarding condensing WGFs, DOE notes that it has identified WGFs available on the market that use condensing technology to achieve AFUE ratings up to 95 percent. Because these types of products are available on the market, DOE finds them to be technologically feasible and

[16] The case study, titled ''Pre-Commercial Scale-Up of a Gas-Fired Absorption Heat Pump'' is available at *www.osti.gov/biblio/1726247* (Last accessed June 14, 2023).

[17] The Purdue report, titled ''Pathways to Decarbonization of Residential Heating,'' is available at *docs.lib.purdue.edu/ihpbc/354/* (Last accessed June 14, 2023).

[18] For this NOPD, DOE will not publish a Technical Support Document (TSD) because no amended standard is proposed. The methodology for the analyses conducted for the NOPD is largely the same as in the Preliminary Analysis, and, thus, DOE references the Preliminary Analysis TSD throughout this document.

[19] JCI's comments stated that WGFs are 7 percent of the WGF market, but DOE interprets this comment to mean that WGFs are 7 percent of the overall furnace market.

considers condensing secondary heat exchangers to be an appropriate technology option to analyze for these products. Additionally, in response to JCI, when evaluating the cost of implementing technologies such as condensing heat exchangers, DOE aims to include the additional costs of other components that may be associated with installing a unit with such technology, such as a condensate pump and drain hoses. The analyses of these costs are discussed in subsequent sections of this document (*e.g.,* the LCC and PBP analyses and the NIA (*see* sections IV.E and IV.G of this document, respectively)).

During the public meeting webinar, AGA requested clarification on how vent dampers were applied in the analysis for weatherized gas furnaces and noted that the test procedure would not give credit for a vent damper on an outdoor weatherized gas furnace. (AGA, Public Meeting Transcript, No. 28 at pp. 20–22) In response, dampers were not considered for WGFs and are not part of the design pathway for improving AFUE for those products. (*See* section IV.B.1.d of this document for the efficiency levels and associated technology options for WGFs.) DOE notes that Tables ES.3.2, ES.3.3, ES.3.19, and 7.4.1 in the November 2022 Preliminary Analysis TSD indicated that vent dampers were included for NWOFs and MHOFs; however, this was a typographical error. DOE clarifies that vent dampers also were not part of the design pathway considered for improving AFUE of NWOFs and MHOFs for the preliminary analysis (nor are they for this NOPD analysis).

In chapter 3 of the November 2022 Preliminary Analysis TSD, DOE also considered three technology options that could potentially reduce the standby mode and off mode energy consumption of NWOFs, MHOFs, and EFs. However, for the reasons explained in section III.A.3 of this document, DOE has tentatively determined that it cannot establish standby mode and off mode standards that meet the criteria of EPCA at this time, so such technologies and standards are not considered further.

3. 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. 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

a. Screened-Out Technologies

DOE eliminated the technologies listed in Table IV.1 from further consideration as options to improve the AFUE (as measured by the DOE test procedure) of NWOFs, MHOFs, and WGFs. The reasons for exclusion associated with each technology are marked with an *X.* Additional details about the reasons for exclusion are discussed in this section.

TABLE IV.1—SCREENED-OUT TECHNOLOGIES

Excluded technology options	Applicable product class(es)	Reasons for exclusion				
		Technological feasibility	Practicability to manufacture, install, and service	Adverse impacts on product utility	Adverse impacts on health or safety	Unique-pathway proprietary technology
Pulse combustion	WGF				X	
Burner derating	WGF, NWOF, MHOF			X		
Low-pressure, air-atomized oil burner.	NWOF, MHOF	X				

Pulse Combustion

Pulse combustion burners operate on self-sustaining resonating pressure waves that alternately rarefy the combustion chamber (drawing a fresh fuel–air mixture into the chamber) and pressurize it (causing ignition by compression heating of the mixture to its flash point). Pulse combustion systems are capable of direct venting without the assistance of mechanical draft. Because the pulse combustion process is very efficient, pulse combustion is generally used in condensing appliances.

In contrast to natural draft and induced draft furnaces, pulse combustion furnaces generate positive pressure in the heat exchanger. Although these products are generally safe, this could create a potential safety problem if the heat exchanger breeches, because combustion products can contaminate the circulation air stream.

Pulse combustion gas furnaces were available in the United States for more than two decades. However, they were withdrawn from the market within the past 20 years because manufacturers found that competing technologies, such as condensing secondary heat exchangers, cost significantly less to

manufacture and operate. In light of the ability of furnace manufacturers to cost-effectively achieve high efficiencies without the use of pulse combustion, the technology's risks do not outweigh its benefits for consumer furnace applications. Accordingly, DOE did not further analyze this technology option as part of this NOPD.

Burner Derating

Decreasing the burner size to increase the ratio of heat transfer area to fuel input, or burner derating, can increase the AFUE rating of furnaces. However, because heat output rate is directly related to burner size, derating also reduces the amount of heated air available to the consumer. This reduction in heat output adversely affects the utility to consumers. Therefore, DOE did not consider this technology option.

Low-Pressure, Air-Atomized Oil Burner

To overcome the low input limitations of conventional oil burners, Brookhaven National Laboratory developed a low-pressure, air-atomized oil burner that can operate at firing rates as low as 0.25 gallons of oil per hour (10 kW). In addition, it can operate with low levels of excess combustion air (less than 10 percent) for lean-burning, ultra-clean combustion. A lower level of excess air generally improves AFUE rating. This burner design is also capable of firing fuel at a high or low input rate, which is manually actuated by a switch, allowing the burner to closely match the smaller heating loads of well-insulated modern homes.

While tests performed at the Brookhaven National Laboratory seem to have successfully demonstrated enhanced oil boiler AFUE performance per the DOE test procedure for furnaces and boilers, the prototype was never tested on a furnace. Therefore, the technological feasibility of the burner prototype for incorporation into a residential oil-fired furnace remains unknown, so DOE does not consider low-pressure, air-atomized oil burners to be a viable technology for efficiency improvement at this time.

b. Remaining Technologies

After reviewing each technology, DOE did not screen out the following technology options and considers them as design options in the engineering analysis:

- Condensing secondary heat exchanger
- Heat exchanger improvements
  - Increased heat exchanger surface area
  - Heat exchanger surface features
  - Heat exchanger baffles and turbulators
- Two-stage and modulating combustion
- Premix burners
- Insulation improvements
  - Increased jacket insulations
  - Advanced forms of insulation
- Off-cycle dampers
  - Electromechanical flue damper
  - Electromechanical burner inlet damper
- Direct venting
- Concentric venting
  - High-static oil burner
- Delayed-action oil pump solendoid valve

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture/install/service, do not result in adverse impacts on consumer utility, product availability, health, or safety, and do not utilize unique-pathway proprietary technologies).

In response to the November 2022 Preliminary Analysis, Lennox commented that DOE has adequately captured most of the technology options and screened appropriately for gas and oil products. (Lennox, No. 26 at p. 4) However, Lennox stated that the alternatives for insulation improvement generally have not been demonstrated in furnace applications and may not be suitable for use in high-temperature applications near combustion surfaces. The commenter stated that insulation used in furnace applications must meet temperature, flame spread, and smoke requirements per the applicable safety standards, and that toxicity and off-gassing must also be considered. Lennox argued that just because an insulation material has better insulating characteristics does not mean that it is suitable for high-temperature furnace applications. (Lennox, No. 26 at p. 6)

In response, DOE notes that insulation improvements may be achieved with thicker layers of existing insulation materials as opposed to necessarily requiring new insulating materials. Therefore, DOE is not screening out insulation improvements in this NOPD. Additionally, as outlined in section IV.B.1 of this document, insulation improvements are not required to meet any of the efficiency levels analyzed in this NOPD.

4. Product Classes

In general, when evaluating and establishing energy conservation standards for a type (or class) of covered product, DOE divides the covered product into classes by: (1) the type of energy used; (2) the capacity of the product, or (3) any other performance-related feature which other products within such type (or class) do not have that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility and any other factors the Secretary deems appropriate. (42 U.S.C. 6295(q))

In this case, DOE divides furnaces into seven product classes based on fuel type (gas, oil, or electric), whether the furnace is weatherized or not, and whether the furnace is designed for use only in mobile homes or not. The current product classes for furnaces are (1) non-weatherized gas furnaces, (2) mobile home gas furnaces, (3) non-weatherized oil-fired furnaces, (4) mobile home oil-fired furnaces, (5) weatherized gas furnaces, (6) weatherized oil-fired furnaces, and (7) electric furnaces. 10 CFR 430.32(e)(1)(ii). As noted previously, non-weatherized gas furnaces and mobile home gas furnaces are being addressed in a separate rulemaking process.[20] Therefore, the product classes that DOE considered for this NOPD are NWOFs, MHOFs, WGFs, WOFs, and EFs. However, for the reasons discussed in sections IV.A.1.a and IV.A.1.b of this document, potential amended energy conservation standards were not analyzed for EFs or WOFs.

In summary, DOE assessed potential amended energy conservation standards in terms of AFUE for the NWOF, MHOF, and WGF product classes in this NOPD. Again, for the reasons discussed in section III.A.3 of this document, DOE did not analyze new or amended standby mode/off mode power standards for any product classes this time.

B. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of NWOFs, MHOFs, and WGFs. There are two elements to consider in the engineering analysis: (1) the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and (2) the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates

[20] See Docket No. EERE–2014–BT–STD–0031.

the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline efficiency. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (*i.e.,* to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market).

For the current analysis, DOE generally employed an efficiency-level approach.

a. Baseline Efficiency

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures anticipated changes to the product resulting from potential energy conservation standards against the baseline model. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least-efficient unit on the market.

A basic consumer gas furnace comprises a hot surface or direct spark ignition system, tubular in-shot burners, noncondensing heat exchanger, blower assembly (including motor and forward-swept fan blade), mechanical draft combustion fan assembly, and automatic controls. A basic consumer oil-fired furnace comprises an interrupted spark ignition system, power burner, noncondensing heat exchanger, and blower assembly. Details and descriptions of each of these components can be found in chapter 3 of the November 2022 Preliminary Analysis TSD.

The identification of baseline units requires establishing the baseline efficiency level. In cases where there is an existing standard, DOE typically defines baseline units as units with efficiencies equal to the current Federal energy conservation standards. However, for MHOFs, DOE did not identify any currently available units at the minimum standard level (75-percent AFUE), and, therefore, DOE analyzed 80-percent AFUE as the baseline level for MHOFs, as it was the lowest efficiency available on the market. The baseline AFUE levels analyzed for the subject NWOFs, MHOFs, and WGFs, as measured by AFUE, along with the typical characteristics of a baseline unit, are shown in Table IV.2.

TABLE IV.2—BASELINE AFUE LEVELS ANALYZED

Product class	Baseline AFUE level (%)	Typical characteristics
NWOF	83	—Single-stage burner. —Electronic ignition. —Aluminized-steel heat exchanger. —Indoor blower fan including PSC motor* and forward-curved blower impeller blade.
MHOF	80	—Single-stage burner. —Electronic ignition. —Aluminized-steel heat exchanger. —Indoor blower fan including PSC motor* and forward-curved blower impeller blade. —Direct venting system. —Built-in evaporator coil cabinet. —Draft inducer.
WGF	81	—Single-stage burner. —Electronic ignition. —Aluminized-steel tubular heat exchanger. —Indoor blower fan including BPM* motor and forward-curved blower impeller blade.

*Residential furnace fans incorporated into NWOFs, MHOFs, and WGFs manufactured on and after July 3, 2019 must meet fan energy rating (''FER'') standards specified in 10 CFR 430.32(y). The blower fan motor (among other factors) can affect FER. Brushless permanent magnet (''BPM'') motors have become the predominant motor type at the baseline AFUE levels for WGFs, and permanent split capacitor (''PSC'') motors, which are less efficient than BPM motors, are common for NWOFs and MHOFs.

Typically, baseline units are representative of the minimum technology and lowest-cost product that manufacturers can produce. Accordingly, in the teardown analysis, DOE examined a variety of baseline units that incorporate the various baseline design options for furnace components.

b. Intermediate Efficiency Levels

DOE also analyzed intermediate efficiency levels for NWOFs and MHOFs. However, for WGFs, DOE has

not found any models on the market between the baseline (81-percent AFUE) and max-tech level (95-percent AFUE) and has, therefore, not analyzed any intermediate efficiency levels for this product class. The intermediate efficiency levels analyzed for NWOFs are 85-percent and 87-percent AFUE, and the intermediate efficiency levels analyzed for MHOFs are 83-percent and 85-percent AFUE. To improve efficiency from the baseline to these intermediate efficiency levels, manufacturers generally increase the surface area of the heat exchanger, which increases the heat transfer area and, thus, allows manufacturers to achieve higher efficiencies. The intermediate efficiency levels analyzed are representative of common efficiency levels available on the market. DOE reviewed its own Compliance Certification Database (''CCD''), as well as AHRI's product certification directories,[21] California Energy Commission's (''CEC's'') database,[22] manufacturer catalogs, and other publicly-available literature to inform its selection of intermediate efficiency levels.

In response to the November 2022 Preliminary Analysis, NYSERDA encouraged DOE to consider an additional efficiency level (EL) between 87-percent and 96-percent AFUE for oil-fired furnaces. NYSERDA stated it anticipates that an AFUE above 90 percent may maximize savings for consumers. NYSERDA added that based on its review of the preliminary TSD material, the DOE Compliance Certification Management System, and AHRI's database, NYSERDA has seen availability of oil furnaces above DOE's proposed EL 2. (NYSERDA, No. 19 at p. 2)

The Joint Advocates similarly encouraged DOE to evaluate an intermediate condensing EL for NWOFs. The Joint Advocates commented that they strongly support DOE's decision to include a max-tech EL at 96-percent AFUE and that DOE should also consider an EL between EL 2 (*i.e.,* 87-percent AFUE) and EL 3 (*i.e.,* 96-percent AFUE). The Joint Advocates further commented that the CCD shows condensing models suggesting that an intermediate EL with condensing technology is feasible for condensing NWOFs. (Joint Advocates, No. 22 at pp. 2–3)

[21] AHRI's Directory of Certified Product Performance (Available at: *www.ahridirectory.org/Search/SearchHome*) (Last accessed Sept. 1, 2023).

[22] California Energy Commission's MAEDbs (Available at: *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx*) (Last accessed Sept. 1, 2023).

As discussed previously, DOE's choice of intermediate efficiency levels was informed by publicly-available databases and manufacturer literature, and the chosen efficiency levels were intended to be representative of common efficiency levels available on the market. In contrast, as discussed in section III.D.2 of this document, DOE is statutorily obligated to analyze the efficiency level that corresponds to the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each product class. (42 U.S.C. 6295(p)(1)) However, because there are very few condensing-level NWOFs on the market, efficiency levels between 87-percent and 96-percent AFUE would not be representative of typical efficiency levels. Therefore, DOE is not analyzing an EL between 87-percent and 96-percent AFUE for NWOFs in this NOPD.

c. Maximum Technology (''Max-Tech'') 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 product.

DOE conducted an analysis of the market and a technology assessment and researched current product offerings to determine the max-tech efficiency levels. The max-tech level identified in each product class corresponds to the highest-AFUE furnace available on the market, which DOE tentatively concludes corresponds to the maximum technologically feasible levels at this time. For NWOFs, DOE identified a design that achieves a max-tech efficiency level of 96-percent AFUE. For MHOFs, the maximum efficiency level that DOE identified was 87-percent AFUE. For WGFs, DOE identified a max-tech efficiency level design that achieves 95-percent AFUE. For WGFs and NWOFs, the max-tech efficiency level is currently achieved by use of a condensing secondary heat exchanger. A constant-airflow BPM indoor blower motor was also implemented as the motor design option for the max-tech efficiency level for NWOFs because the only NWOF model on the market available at this level includes a constant-airflow BPM motor, and it is unclear if this level is achievable without a constant-airflow fan. For MHOFs, the max-tech efficiency level is currently achieved by use of a heat exchanger with increased surface area.

Lennox stated that the DOE weatherized gas furnace standard of 81-percent AFUE is at the maximum practical level that is economically justified and provides reliable performance. (Lennox, No. 26 at p. 6) Lennox stated that, as the AFUE of weatherized gas furnace products is increased, heat exchanger and flue temperatures are reduced, which increases the risk of condensing operation and corrosion to the heat exchanger. (*Id.*) Lennox stated that while condensing weatherized gas furnaces are feasible, they require secondary heat exchangers that increase static pressure in the airstream and pressure drop within the heat exchanger. Further, Lennox stated that the additional resistance must be overcome with increased electrical power at all operating conditions, including cooling and ventilation mode. (*Id.* at pp. 6–7) Lennox stated that the measures to prevent freezing of condensate in weatherized gas furnaces and condensate disposal add cost and consume additional energy. (*Id.* at p. 7) Lennox commented that these methods include maintaining the temperature of the condensate system above freezing by either conditioning the condensate system using electric heat tape or routing the condensate disposal system through conditioned space. The commenter stated that the use of heat tape consumes additional energy. Lennox stated that routing the condensate disposal system through conditioned space is not technically feasible or economically viable for a weatherized product that is contained outdoors. (*Id.*) Lennox further commented that another method to prevent freezing in weatherized gas furnaces is to install a pit or trench condensate drainage system that extends below the frostline and also neutralizes the acidic condensate created during combustion. Lennox stated that the frost line in the United States varies greatly by region from 5″ in Georgia to 80″ in Minnesota. Lennox stated that the method of installing a pit or trench condensate drainage system that extends below the frostline and neutralizes the acidic condensate created during condensing combustion may work in some mild climates at a reasonable cost but would be expensive to install and maintain in colder climates. (*Id.*)

In response, the Department notes the fact that condensing weatherized gas furnaces currently exist on the market demonstrates that they are technologically feasible. DOE accounts for costs that may be associated with the installation of condensing systems, including additional costs of heat tape

and/or a condensate pump suitable to meet the need of an unconditioned space, which is discussed further in section IV.E of this document. The financial feasibility of higher efficiency levels is discussed further in section V of this document.

JCI commented it is unaware of any condensing MHOFs commercially available today. (JCI, No. 25 at p. 2) AHRI also commented that it is unaware of any commercially-available condensing MHOFs. (AHRI, No. 23 at p. 5) AHRI commented that the feasibility of moving to a condensing heat exchanger for MHOFs is low. AHRI added that there are challenges with maintaining airflow options and footprint size to allow for an easy replacement. (*Id.*)

In response, DOE agrees that there are currently no condensing MHOFs on the market, and the Department has not considered an efficiency level for MHOFs that requires a condensing heat exchanger as there are no data to indicate that it would be feasible for use in MHOFs.

d. Summary of Efficiency Levels Analyzed

DOE presents AFUE efficiency levels analyzed along with the technologies that are expected to be used to increase energy efficiency above the baseline efficiency level for NWOFs, MHOFs, and WGFs in Table IV.3, Table IV.4 and Table IV.5, respectively.

TABLE IV.3—AFUE EFFICIENCY LEVELS AND TECHNOLOGIES USED AT EACH EFFICIENCY LEVEL ABOVE BASELINE FOR NWOFS

Efficiency level	AFUE (%)	Description of technologies typically incorporated
0—Baseline	83	See Table IV.2 for baseline features.
1	85	Baseline EL + Increased heat exchanger area.
2	87	EL 1 + Increased heat exchanger area.
3—Max-tech	96	EL 2 + Addition of condensing secondary heat exchanger (and associated components, sensors, *etc.*) + Constant-airflow BPM motor.

TABLE IV.4—AFUE EFFICIENCY LEVELS AND TECHNOLOGIES USED AT EACH EFFICIENCY LEVEL ABOVE BASELINE FOR MHOFS

Efficiency level	AFUE (%)	Description of technologies typically incorporated
0—Baseline	80	See Table IV.2 for baseline features.
1	83	Baseline EL + Increased heat exchanger area.
2	85	EL 1 + Increased heat exchanger area.
3—Max-tech	87	EL 2 + Increased heat exchanger area.

TABLE IV.5—AFUE EFFICIENCY LEVELS AND TECHNOLOGIES USED AT EACH EFFICIENCY LEVEL ABOVE BASELINE FOR WGFS

EL	AFUE (%)	Description of technologies typically incorporated
0—Baseline	81	See Table IV.2 for baseline features.
1—Max-tech	95	Baseline EL + Addition of condensing secondary heat exchanger (and associated components, sensors, *etc.*).

2. Cost Analysis

The cost analysis portion of the Engineering Analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, and the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

□ *Physical teardowns:* Under this approach, DOE physically dismantles a commercially-available product, component-by-component, to develop a detailed bill of materials for the product.

□ *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.

□ *Price surveys:* If neither a physical nor catalog teardown is feasible (*e.g.,* for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable), cost-prohibitive, or 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 a combination of physical and catalog teardowns. DOE estimated the manufacturer production cost (''MPC'') associated with each efficiency level to characterize the cost-efficiency relationship of improving consumer furnace performance, in terms of AFUE.

The units selected for the teardown analysis spanned a range of manufacturers and efficiencies for commercially-available products that are the subject of this rulemaking. Products were selected that have characteristics of typical products on the market at a representative input capacity. WGFs selected for physical teardown generally had input capacities of approximately 80 thousand British thermal units per hour (''kBtu/h''), while oil units selected for physical teardown generally had input capacities of approximately 105 kBtu/h. These capacities were determined to be a

representative input capacity for WGFs and for NWOFs and MHOFs, respectively, based on information gathered as part of the market and technology assessment (*see* section IV.A of this document), as well as discussions with manufacturers. Where needed, catalog teardowns were also conducted to supplement the physical teardowns. DOE estimated the manufacturing cost for each furnace selected for teardown by disassembling the furnace and developing a bill of materials (''BOM''). The resulting BOM provides the basis for the MPC estimates for products at various efficiency levels spanning the full range of efficiencies from the baseline to max-tech.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly-traded manufacturers primarily engaged in heating, ventilation, and air conditioning (''HVAC'') manufacturing whose combined product range includes oil and weatherized gas furnaces. The manufacturer markup estimates are consistent with the manufacturer markups developed for a final rule for furnace fan energy conservation standards published in the **Federal Register** on July 3, 2014. 79 FR 38130. Specifically, DOE estimates the industry average manufacturer markup to be 1.35 for NWOFs, 1.29 for MHOFs, and 1.27 for WGFs.

a. Teardown Analysis

For the teardown analysis, DOE used a total of 31 teardowns of consumer furnaces as the basis for calculating industry MPCs. The units DOE selected for teardown are manufactured in considerable volume, are commonly available, and have features that DOE believes are representative of the most common characteristics (*i.e.,* input capacity, configuration, and heat exchanger type) of each product class. As discussed previously, most physical teardown units had input capacities of approximately 80 kBtu/h for WGFs or 105 kBtu/h for NWOFs and MHOFs, which DOE considers to be representative of those furnace product classes. To the extent possible, all major efficiency levels and technologies were captured in the selection of models for the teardown analysis. WGF and NWOF teardowns were considered separately.

Due to the similarity observed in NWOF and MHOF designs available in the market, DOE tentatively concluded that the costs associated with increasing the energy efficiency of MHOFs are equivalent to the costs for NWOFs. A MHOF teardown was used to examine key differences between NWOFs and MHOFs and confirmed that the MPCs of MHOFs could be estimated based on the NWOF teardowns. Therefore, DOE based MPC estimates for MHOFs at each efficiency level analyzed largely on teardowns of NWOFs at that efficiency level.

Whenever possible, DOE examined multiple models from a given manufacturer that capture different design options and used them as direct points of comparison. The teardown selections also minimized the incorporation of non-efficiency-related premium features, which otherwise could inflate the incremental manufacturing cost of achieving higher efficiency levels.

DOE examined products with a variety of indoor blower motor technologies and combustion systems (*i.e.,* single-stage, two-stage, or modulating). DOE also examined products with PSC, constant-torque BPM, and constant-airflow BPM indoor blower motors. As further discussed in section IV.B.2.b of this document, cost adders were developed for these technologies and applied in the downstream analyses to estimate the manufacturing cost of going from one technology to another with higher efficiency (*e.g.,* using a constant-airflow BPM instead of a constant-torque BPM, or two-stage combustion instead of single-stage combustion).

b. Cost Estimation Method

DOE assigned costs of labor, materials, and overhead to each part, whether purchased or produced in-house. DOE then aggregated single-part costs into major assemblies (*e.g.,* packaging, cabinet assembly, heat exchanger, burner system/gas train, exhaust subassembly, fan system, controls) and summarized these costs in a spreadsheet BOM. DOE repeated this same process for every physical and catalog teardown in the engineering analysis.

Analytical inputs related to manufacturer practices and cost structure play an important role in estimating the final cost of a product. DOE used inputs regarding the manufacturing process parameters (*e.g.,* equipment use, labor rates, tooling depreciation, and cost of purchased raw materials) to determine the value for each furnace component. DOE collected information on labor rates, tooling costs, raw material prices, and other factors to use as inputs into the cost estimates. DOE determined values for these parameters using internal expertise and confidential information available to its contractors, some of which was obtained via confidential interviews with manufacturers. For purchased parts, DOE estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. DOE then summed the values of the furnace components into assembly costs and, finally, the total MPC for the entire furnace.

The MPC includes material, labor, and depreciation costs, as well as the overhead costs associated with the manufacturing facility. Material costs include both raw materials and purchased-part costs. Labor costs include fabrication, assembly, and indirect and overhead (burdened) labor rates. Depreciation costs include production equipment depreciation, tooling depreciation, and building depreciation. The overhead costs associated with the manufacturing facility include indirect process costs, utilities, equipment and building maintenance, and reworking defective parts/units.

DOE determined the costs of raw materials based on manufacturer interviews, quotes from suppliers, and secondary research. Past results are updated periodically and/or inflated to present-day prices using indices from resources such as MEPS Intl.,[23] PolymerUpdate,[24] the U.S. Geologic Survey (''USGS''),[25] and the Bureau of Labor Statistics (''BLS'').[26] Metal raw material prices, such as stainless steel and other sheet metals, are estimated on the basis of five-year averages to smooth out spikes in demand. Other ''raw'' materials such as plastic resins, insulation materials, *etc.* are estimated on a current-market basis. For non-metal raw material prices, DOE used prices based on current market data (as of December 2022), rather than a 5-year average, because non-metal raw materials have not experienced the same

[23] For more information on MEPS Intl, please visit: *www.meps.co.uk/* (Last accessed Sept. 5, 2023).

[24] For more information on PolymerUpdate, please visit: *www.polymerupdate.com* (Last accessed Sept. 5, 2023).

[25] For more information on the USGS metal price statistics, please visit *www.usgs.gov/centers/nmic/commodity-statistics-and-information* (Last accessed Sept. 5, 2023).

[26] For more information on the BLS producer price indices, please visit: *www.bls.gov/ppi/* (Last accessed Sept. 5, 2023).

level of price volatility in recent years as metal raw materials.

DOE characterized parts based on whether manufacturers fabricated them in-house or purchased them from outside suppliers. For fabricated parts, DOE estimated the price of intermediate materials (*e.g.,* tube, sheet metal) and the cost of forming them into finished parts. For purchased parts, DOE estimated the purchase prices paid to the original equipment manufacturers (''OEMs'') of these parts, based on discussions with manufacturers during confidential interviews. Whenever possible, DOE obtained price quotes directly from the component suppliers used by furnace manufacturers whose products were examined in the engineering analysis. DOE determined that the components in Table IV.6 are generally purchased from outside suppliers.

TABLE IV.6—PURCHASED FURNACE COMPONENTS

Assembly	Purchased sub-assemblies
Burner/Exhaust.	Gas valve.
	Spark igniter.
	Draft inducer assembly.
Blower	Indoor blower fan blade.
	Indoor blower fan motor.
Controls	Control boards.
	Capacitors, transformers, contactors, switches, *etc.*

Certain factory parameters, such as fabrication rates, labor rates, and wages, also affect the cost of each unit produced. DOE factory parameter assumptions were based on internal expertise and manufacturer feedback. Table IV.7 lists the factory parameter assumptions used in the analysis. For the engineering analysis, these factory parameters, including production volume, are the same at every efficiency level. The production volume used at each efficiency level corresponds with the average production volume, per manufacturer, if 100 percent of all units manufactured were at that efficiency level. This production volume was estimated based on historical shipments. These assumptions are generalized to represent typical production and are not intended to model a specific factory.

TABLE IV.7—FACTORY PARAMETER ASSUMPTIONS

Parameter	Oil furnace estimate	WGF estimate
Actual Annual Production Volume (units/year)	5,000 units/year	500,000 units/year.
Purchased Parts Volume	5,000 units/year	100,000 units/year.
Workdays Per Year (days)	250	250.
Assembly Shifts Per Day (shifts)	1	2.
Fabrication Shifts Per Day (shifts)	2	2.
Fabrication Labor Wages ($/h)	16	16.
Assembly Labor Wages ($/h)	16	16.
Length of Shift (hrs)	8	8.
Average Equipment Installation Cost (% of purchase price)	10%	10%.
Fringe Benefits Ratio	50%	50%.
Indirect to Direct Labor Ratio	33%	33%.
Average Scrap Recovery Value	30%	30%.
Worker Downtime	10%	10%.
Burdened Assembly Labor Wage ($/h)	24	24.
Burdened Fabrication Labor Wage ($/h)	24	24.
Supervisor Span (workers/supervisor)	25/1	25/1.
Supervisor Wage Premium (over fabrication and assembly wage)	30%	30%.

Indoor Blower Motor Costs

As discussed in section IV.B.1.a of this document, the baseline design for WGFs includes a BPM motor. DOE research suggests that the predominant BPM indoor blower motors sold on the market today are either a constant-torque (''CT–BPM'') or a constant-airflow (''CA–BPM'') design. Both types of motors rely on electronic variable-speed motor systems that are typically mounted in an external chassis to the back of the motor. CA–BPM motors utilize feedback control to adjust torque based on ESP in order to maintain a desired airflow. This differentiates them from CT–BPM motors, which will maintain torque and likely decrease airflow output in environments with high ESPs. CT–BPMs are capable of achieving airflows similar to CA–BPMs but are generally less expensive. Therefore, DOE considered the baseline design to include a CT–BPM motor for the WGF product class and determined the incremental cost of a CA–BPM motor.

DOE's review of the market showed that PSC motors are still being used in some NWOFs and MHOFs, so the final MPC results are presented based on a PSC motor at the baseline through 87-percent AFUE. To account for the variety of motor technologies available on the market, DOE determined the incremental cost associated with use of various types of more-efficient BPM fan motors as compared to baseline PSC motors for NWOFs and MHOFs. Additionally, for NWOFs, a constant-airflow BPM indoor blower motor was implemented as the motor design option for the max-tech efficiency level because the only NWOF model on the market available at this level includes a constant-airflow BPM motor, and it is unclear if this level is achievable without a constant-airflow fan. For the NWOF efficiency levels below max-tech and for all MHOF efficiency levels, DOE calculated the additional cost to switch from a PSC blower motor to either a constant-torque or a constant-airflow BPM motor. As discussed in Chapter 8 of the November 2022 Preliminary Analysis TSD, these costs are applied in the LCC and PBP analyses to determine the MPC of a furnace with each motor technology in order to better represent typical costs to consumers for NWOFs and MHOFs. Constant-airflow BPM blower motors are sometimes used as a utility-enhancing feature on units below the max-tech efficiency level. The adders are outlined in Table IV.8.

TABLE IV.8—COST ADDERS FOR BPM BLOWER MOTORS

Product class	Input capacity (kBtu/h)	Incremental cost increase for BPM–CT (2022$)	Incremental cost increase for BPM–CA (2022$)
NWOF, MHOF	105	$30.65	$80.48
WGF	80	37.94	59.92

Multistage Furnaces

The market for WGFs contains a significant number of two-stage furnaces that are rated at the same efficiency as single-stage furnaces. DOE believes consumers sometimes choose to purchase two-stage products for the additional thermal comfort offered by furnaces with multiple stages of heating output. DOE determined that oil units with multi-staging were rare and, thus, not representative of the market, so adders were not developed for the NWOF and MHOF product classes. Where applicable, the additional cost to change to a two-stage furnace includes the added cost of a two-stage gas valve, a two-speed inducer assembly, an additional pressure switch, and additional controls and wiring. The additional cost to change to a modulating furnace includes the added cost of a modulating gas valve, an inducer assembly, an upgraded pressure switch, and additional controls and wiring. The incremental costs to implement multi-staging in WGFs are outlined in Table IV.9.

TABLE IV.9—MULTI-STAGING INCREMENTAL COST INCREASE

Adder	Incremental cost increase for multi-staging (2022$)
Two-Stage	$21.07
Modulating	75.36

Low-NO_X and Ultralow-NO_X Furnaces

Some furnaces are marketed as ''low-NO_X,'' which indicates that their NO_X emissions are less than 40 nanograms of NO_X per joule of useful heat energy (''ng/J''). Certain local jurisdictions require natural gas furnaces to comply with NO_X emissions restrictions as low as 14 ng/J,[27] which is referred to as ''ultralow-NO_X.'' A common method of reducing furnace NO_X emissions is to slightly delay the natural gas combustion process, which in turn produces a cooler flame and results in suppressed formation of NO_X.[28] DOE has observed during its teardown analysis that to achieve low-NO_X operation, manufacturers implement low-NO_X baffles. For ultralow-NO_X operation, DOE used NWGF teardowns to approximate the cost to implement this technology option in WGFs, as DOE understands that the methodology would be the same for both product classes. Through these teardowns of NWGFs, DOE has observed that in order to achieve ultralow-NO_X operation, the in-shot burners typically used in residential furnaces were replaced with a mesh premix burner. In addition, the model used a variable-speed BPM inducer fan motor. DOE identified an ultralow-NO_X WGF on the market and compared the burner construction for the torn-down NWGF and the ultralow-NO_X WGF. DOE found that the approach used for achieving ultralow-NO_X in WGFs is similar to that used in NWGFs. DOE also determined that oil units with ultralow-NO_X operation were rare and, thus, not representative of the market, so adders were not developed for the NWOF and MHOF product classes.

Using raw material price data, teardown data from NWGFs, and manufacturing expertise DOE estimated the manufacturing cost difference between standard NO_X burners and low-NO_X and ultralow-NO_X burners. For low-NO_X, MPC cost values were developed for the implementation of low-NO_X baffles in WGFs at the representative input capacity of 80 kBtu/h. For ultralow-NO_X, MPC values were developed for the implementation of a mesh premix burner and variable-speed BPM inducer fan (along with other related components necessary). The resulting MPC estimates to achieve low-NO_X and ultralow-NO_X operation are shown in Table IV.10.

In the LCC and PBP analysis (*see* section IV.E of this document), DOE estimated the fractions of furnaces that are installed in jurisdictions that require low-NO_X or ultralow-NO_X compliance and applied these cost adders to those fractions of furnace installations accordingly. The application of these adders is discussed in more detail in Chapter 8 of the November 2022 Preliminary Analysis TSD.

TABLE IV.10—ADDITIONAL MPCS FOR LOW-NO_X AND ULTRALOW-NO_X WGFS

Adder	Value (2022$)
Low-NO_X	$3.10
Ultralow-NO_X	113.68

Shipping Costs

Freight is not a manufacturing cost, but because it is a substantial cost incurred by the manufacturer, DOE accounts for shipping costs separately from other costs. DOE calculated shipping costs based on a typical 53-foot straight-frame trailer with a storage volume of 4,240 cubic feet.

DOE first calculated the cost per cubic foot of space on a trailer based on a cost of $3,643 per shipping load and the standard dimensions of a 53-foot trailer. This cost was determined based on a combination of full truck load (''FTL'') freight quotations, manufacturer feedback, and BLS producer price indices for the ''fuels and related products and power'' grouping.[29] Then, DOE examined the average sizes of products in each product class at each efficiency and capacity combination analyzed. DOE estimated the shipping costs by multiplying the product volume by the cost per cubic foot of space on the trailer. Furnace dimensions typically do not change as a result of increases in efficiency, and accordingly, DOE's shipping costs show no change across efficiency levels. In determining volumetric shipping costs, DOE also used manufacturer feedback regarding product mix on each trailer, packing efficiency, and methods and equipment used to load the trailers to revise the shipping costs. Table IV.11 shows the

[27] Rule 1111 of the South Coast Air Quality Management District (''SCAQMD'') of southern California currently requires that all NWGF and MHGF not exceed a 14 ng/J restriction on NO_X emissions. For more information on Rule 1111, see *www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1111.pdf?sfvrsn=4* (Last accessed Sept. 5, 2023).

[28] U.S. Environmental Protection Agency. Natural Gas Combustion (Available at: *www3.epa.gov/ttnchie1/ap42/ch01/final/c01s04.pdf*) (Last accessed June 28, 2023).

[29] U.S. Department of Labor, Bureau of Labor Statistics, *Producer Price Indices* (Available at: *data.bls.gov/timeseries/WPU057303?data_tool=XGtable*) (Last accessed Feb. 17, 2022).

shipping costs for the products analyzed in this rulemaking.

TABLE IV.11—SHIPPING COSTS PER UNIT

Product class	Representative capacity (kBtu/h)	Per-unit shipping cost (2022$)
WGF	80	55.69
NWOF	105	19.92
MHOF	105	19.92

3. Cost-Efficiency Results

Using the MPCs for individual teardowns and adders described in section IV.B.2.b of this document, DOE develops aggregated MPCs for each product class. The final results of the AFUE engineering analysis are the MPCs for WGFs, NWOFs, and MHOFs at each efficiency level. The cost-efficiency results are shown in tabular form in Table IV.12 through Table IV.14 as efficiency versus MPC and MSP. These results include the furnace fan and combustion system staging incorporated into most furnace designs.

TABLE IV.12—COST-EFFICIENCY DATA FOR WGFS WITH A CONSTANT-TORQUE BPM INDOOR BLOWER MOTOR AND A SINGLE-STAGE BURNER

AFUE	MPC (2022$)	MSP (2022$)
81	$1,412.32	$1,793.65
95	1,505.40	1,911.85

TABLE IV.13—COST-EFFICIENCY DATA FOR NWOFS WITH A PSC INDOOR BLOWER MOTOR AND A SINGLE-STAGE BURNER

AFUE	MPC (2022$)	MSP (2022$)
83	$700.73	$945.98
85	730.94	986.77
87	761.16	1,027.57
96	1,334.85	1,802.05

TABLE IV.14—COST-EFFICIENCY DATA FOR MHOFS WITH A PSC INDOOR BLOWER MOTOR AND A SINGLE-STAGE BURNER

AFUE	MPC (2022$)	MSP (2022$)
80	$664.47	$857.16
83	709.79	915.63
85	740.01	954.61
87	770.23	993.59

C. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. Before developing markups, DOE defines key market participants and identifies distribution channels.

For the subject consumer furnaces, the main parties in the distribution chains are: (1) manufacturers; (2) wholesalers or distributors; (3) retailers; (4) mechanical contractors; (5) builders; (6) manufactured home manufacturers, and (7) manufactured home dealers/retailers. For this NOPD, DOE maintained the same approach as in the preliminary analysis. DOE characterized two distribution channel market segments to describe how NWOFs, MHOFs, and WGFs pass from the manufacturer to residential and commercial consumers: [30] (1) replacements and new owners [31] and (2) new construction.

In replacement and new owner market, the primary distribution channel for NWOFs, MHOFs, and WGFs is characterized as follow:

Manufacturer → Wholesaler → Mechanical Contractor → Consumer

DOE estimates that the above distribution channel applies to a majority of the shipment of the subject consumer furnaces.[32] However, the retail distribution channel (including internet sales) has grown significantly in the last five years (previously it was negligible), and some consumers purchase the appliance directly and then have contractors install it. Accordingly, DOE considered the following additional distribution channels: [33]

Manufacturer → Retailer → Consumer
Manufacturer → Retailer → Mechanical Contractor → Consumer

For mobile home applications, there is another distribution channel considered on top of the aforementioned, where the MHOF or WGF is purchased via a mobile home specialty retailer or dealer: [34]

Manufacturer → Mobile Home Specialty Retailer/Dealer → Consumer

In the new construction market, DOE identified three primary distribution channels that involve builders, or manufactured home builders when considering mobile home applications:

Manufacturer → Wholesaler → Mechanical Contractor → Builder → Consumer
Manufacturer → Wholesaler → Builder → Consumer
Manufacturer → Mobile Home Manufacturer → Mobile Home Dealer → Consumer

For both the replacements and new owners and the new construction markets, DOE additionally considered the national accounts or direct-from-manufacturer distribution channel, where the manufacturer through a wholesaler sells directly to consumers.[35]

[30] DOE estimates that five percent of WGFs and three percent of NWOFs are installed in commercial buildings.

[31] New owners are new furnace installations in buildings that did not previously have a NWOF, MHOF, or WGF, or existing owners that are installing an additional consumer furnace. These primarily consist of households that add or switch to these furnaces during a major remodel.

[32] In the residential sector, DOE estimates that this distribution channel is applicable to 90 percent of the shipments for NWOFs and MHOFs, and 80 percent for WGFs; in commercial sector, it is applied to 75 percent of NWOF and 70 percent of WGF distributions.

[33] In the residential sector, DOE estimates that these two distribution channels combined are applicable to 5 percent of the shipments for NWOFs and MHOFs, and 15 percent for WGFs (in mobile home applications, 10 percent of the WGFs distributed to mobile homes is assumed to go through these channels); in the commercial sector, they are applied to 10 percent of NWOF and 15 percent of WGF distributions.

[34] DOE estimates that 5 percent of MHOFs and 10 percent of WGFs that go to mobile homes are distributed through this channel.

[35] The national accounts channel where the buyer is the same as the consumer is mostly applicable

Manufacturer → Wholesaler (National Account) → Buyer → Consumer

DOE developed baseline and incremental markups for each participant in the distribution chain to ultimately determine the consumer purchase cost. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[36]

Lennox stated that the application of lower incremental markups for increased consumer furnace standard levels considered in the TSD should be reviewed. Lennox stated that a significantly discounted incremental markup for high EL levels from baseline markup is not logical or aligned with business practices. (Lennox, No. 26 at p. 8) Lennox added that the assumption of reduced incremental markups for higher efficiency standards is contrary to normal industry practice and the expectations of its shareholders. (Lennox, No. 26 at p. 8)

In response, DOE's incremental markup approach assumes that an increase in profitability, which is implied by keeping a fixed markup when the product price goes up, is unlikely to be viable over time in reasonably competitive markets. DOE recognizes that actors in the distribution chains are likely to seek to maintain the same markup on appliances in response to changes in manufacturer sales prices after an amendment to energy conservation standards. However, DOE believes that retail pricing is likely to adjust over time as those actors are forced to readjust their markups to reach a medium-term equilibrium in which per-unit profit is relatively unchanged before and after standards are implemented.

DOE acknowledges that markup practices in response to amended standards are complex and vary with business conditions. However, DOE's analysis necessarily only considers changes in appliance offerings that occur in response to amended standards. DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable. Chapter 6 of the November 2022 Preliminary Analysis TSD provides details on DOE's development of markups for oil and weatherized gas furnaces.[37]

D. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of oil and weatherized gas furnaces at different efficiencies in representative U.S. residential buildings, commercial buildings, and residential mobile homes, and to assess the energy savings potential of increased oil and weatherized gas furnace efficiency. The energy use analysis estimates the range of energy use of oil and weatherized gas furnaces 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 potential energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE estimated the annual energy consumption of oil and weatherized gas consumer furnaces at specific energy efficiency levels across a range of climate zones, building characteristics, and space heating needs. The annual energy consumption includes the natural gas, liquid petroleum gas (''LPG''), oil, and electricity, as applicable, used by the furnace.

To determine the field energy use of the subject furnaces, DOE developed a building sample based on the Energy Information Administration's (''EIA'') 2015 Residential Energy Consumption Survey (''RECS 2015'')[38] and 2012 Commercial Building Energy Consumption Survey (''CBECS 2012'').[39] [40] DOE used RECS 2015-reported or CBECS 2012-reported heating energy consumption (based on the existing heating system) to calculate the heating load of each household or building. The heating load represents the amount of heating required to keep a housing unit or building comfortable throughout an average year. DOE assigned the energy efficiency of existing systems based on the design of the distribution systems, a historical distribution of energy efficiencies for NWOFs, MHOFs, and WGFs, and data about the age of the existing furnace. The estimation of heating loads also required calculating the electricity consumption of the blower, because heat from the operation of the blower contributes to space heating. In addition, DOE made adjustments based on historical weather data, projections of building shell efficiency, and building square footage, as well as for homes that had secondary heating equipment that used the same fuel as the furnace. To complete the analysis, DOE calculated the anticipated energy consumption of alternative (more energy-efficient) products if they were to replace existing systems in each housing unit or commercial building.

DOE also included the electricity use of auxiliary equipment, such as condensate pumps and heat tape, which are sometimes installed with higher-efficiency products. The electricity consumption of the auxiliary equipment (''$ElecUse_{Aux}$'') is added to the total electricity consumption.

Chapter 7 of the November 2022 Preliminary Analysis TSD provides details on DOE's energy use analysis for oil and weatherized gas furnaces.

AHRI commented that standard heat tape has an average energy consumption of 9 W/ft, adding that this additional load would increase energy use and is not accounted for in DOE's energy use analysis for these products. AHRI stated that there are additional challenges surrounding prevention of freezing condensate for WGF units, and although AHRI suggested that electric strip heating could be used to overcome this problem, such solution would add electrical losses. (AHRI, No. 23 at p. 5)

In response, DOE accounted for heat tape use in cases when a WGF is installed in an outdoor environment that could face freezing conditions. DOE assumed that such installations would occur in locations facing freezing conditions based on the outdoor heating

to NWOFs and WGFs installed in small to mid-size commercial buildings, where on-site contractors purchase equipment directly from wholesalers at lower prices due to the large volume of equipment purchased, and perform the installation themselves. DOE's analysis assumes that approximately 5 and 15 percent of NWOFs and WGFs installed in the residential and commercial sector, respectively, use national accounts distribution channel for replacements. For new construction, DOE assumes 10 percent of the subject furnaces installed in residential sector and 20 percent installed in commercial are distributed through national accounts.

[36] 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.

[37] In this NOPD, DOE is referencing the November 2022 Preliminary TSD for general methodology; note that some inputs have been updated for this NOPD.

[38] Energy Information Administration (EIA), 2015 Residential Energy Consumption Survey (RECS). (Available at: *www.eia.gov/consumption/residential/*) (Last accessed August 1, 2023).

[39] Energy Information Administration (EIA), 2012 Commercial Buildings Energy Consumption Survey (CBECS). (Available at: *www.eia.gov/consumption/commercial/*) (Last accessed August 1, 2023).

[40] At the time DOE performed the analyses underlying this proposed determination, the RECS 2015 and CBECS 2012 were the latest available full data releases.

design temperature (or the 99th percentile). For the WGF sample, which is largely in warmer parts of the country, DOE estimated that about 5 percent of those installations would require heat tape, and DOE assumed that a larger fraction (around 50 percent) would deal with freeze protection through other methods, such as running the condensate lines through the ground or inside the WGF unit and into the building. For the energy use analysis, DOE used on average 45 watts (or 9 W/ft times 5 feet) for the energy consumption of installations requiring heat tape. For another 5 percent of installations, DOE accounted for the use of a condensate pump with an average energy consumption of 60 watts. DOE notes that any additional installation costs would not change DOE's tentative decision not to amend standards for the subject products.

E. 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 oil and weatherized gas furnaces. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

□ Life-Cycle Cost (LCC) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

□ Payback Period (PBP) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of oil and weatherized gas furnaces in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units and, where appropriate, commercial buildings. As stated previously, DOE developed household and commercial building samples from RECS 2015 and CBECS 2012. For each sample household or commercial building, DOE determined the energy consumption for the oil and weatherized gas furnaces and the appropriate energy price. By developing a representative sample of households and commercial buildings, the analysis captured the variability in energy consumption and energy prices associated with the use of oil and weatherized gas furnaces.

Inputs to the LCC calculation include the installed cost to the consumer, operating expenses, the lifetime of the product, and the discount rate that applies to projected expenses. Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes (where appropriate)—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. Inputs to the payback period calculation include the installed cost to the consumer and first year operating expenses. DOE created distributions of values for installation cost, repair and maintenance, product lifetime, and discount rates with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP 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 oil, electric, and weatherized gas furnace user samples. For this determination, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[41] The model calculated the LCC and PBP for products at each efficiency level for 10,000 furnace installations in housing units or commercial buildings per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who are projected to purchase more-efficient furnaces than the baseline furnace in the simulation, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of oil and weatherized gas furnaces as if each were to purchase a new product in the expected first year of required compliance with new or amended standards. Any amended standards would apply to oil and weatherized gas furnaces manufactured five years after the date on which any new or amended standard is published in the **Federal Register**. (42 U.S.C. 6295(m)(4)(A)(ii)) For purposes of its analysis, DOE used 2030 as the first year of compliance with any amended standards for oil and weatherized gas furnaces.

Table IV.15 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and how all inputs to the LCC and PBP analyses are applied, are contained in chapter 8 of the November 2022 Preliminary Analysis TSD and its appendices.

[41] Crystal Ball™ is a commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel (Available at: *www.oracle.com/middleware/technologies/crystalball.html*) (Last accessed August1, 2023).

TABLE IV.15—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Input	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and distribution chain markups and sales tax, as appropriate. Used historical data to derive a price-scaling index to project product costs.
Installation Costs	Baseline installation cost determined with data from RSMeans 2023, manufacturer literature, and expert consultant. DOE assumed increased installation costs for condensing furnaces.
Annual Energy Use	The annual energy consumption per unit at each efficiency level (see section IV.D of this document). Variability: Based on RECS 2015 and CBECS 2012.
Energy Prices	Natural Gas: Based on EIA's Natural Gas Navigator data for 2022 and RECS 2015 and CBECS 2012 billing data. Propane and Fuel Oil: Based on EIA's State Energy Data System ("SEDS") for 2021. Electricity: Based on EIA's Form 861 data for 2022 and RECS 2015 and CBECS 2012 billing data. Variability: State energy prices determined for residential and commercial applications. Marginal prices used for natural gas, propane, and electricity prices.
Energy Price Trends	Residential and commercial prices were escalated by using EIA's 2023 *Annual Energy Outlook* (*AEO 2023*) forecasts to estimate future energy prices. Escalation was performed at the Census Division level.
Repair and Maintenance Costs	Baseline installation cost determined with data from RSMeans 2023, manufacturer literature, and expert consultant. DOE assumed increased repair and maintenance costs for condensing furnaces.
Product Lifetime	Based on shipments data, multi-year RECS, American Housing Survey, American Home Comfort Survey data. Average: 20.2–22.5 years
Discount Rates	For residential end users, approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. For commercial end users, DOE calculates commercial discount rates as the weighted average cost of capital using various financial data.
Compliance Date	2030.

* **Note:** References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the November 2022 Preliminary Analysis TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

DOE estimated product prices in the year of compliance by using a least-squares power-law fit on the inflation-adjusted, unified price index (historical Producer Price Index (''PPI'') data for warm-air furnaces from the Bureau of Labor Statistics (''BLS'') spanning the time period 1990–2018 versus cumulative shipments.[42]

In order to improve real-world representativeness, NYSERDA recommended that DOE consider using piecewise power-law curves for different time intervals to estimate the learning rate parameter in the LCC analysis. NYSERDA provided data to explain that prices decreased until 2017 and then started to increase. NYSERDA added that one possible explanation for this is that growing economies are consuming more raw materials that go into manufacturing furnaces, and such an increase in global aggregate demand for raw materials exerts upward pressure on product prices. The commenter explained that piecewise power-law curves are a common approach in cases where there is a reversal in directionality of trends and cited an example journal article. NYSERDA commented that using one power-law curve before 2017 and another after would more accurately capture the reduction in furnace prices in the future. (NYSERDA, No. 19 at pp. 3–4)

DOE reviewed NYSERDA's suggestion for an alternative price learning approach; however, insufficient data are available to implement the approach for the products considered in this rulemaking. In addition, the recommendation to segment the curve before and after 2017 is similar to the alternative price scenarios that DOE typically explores when proposing or finalizing amended standards, but in this case, DOE has tentatively determined not to amend standards. For these reasons, DOE has not changed its methodology for this NOPD.

2. Installation Cost

The installation cost is the expense to the consumer of installing the furnace, in addition to the cost of the furnace itself. Installation cost includes all labor, overhead, and any miscellaneous materials and parts needed that are associated with the replacement of an existing furnace or the installation of a furnace in a new home, as well as delivery of the new furnace, removal of the existing furnace, and any applicable permit fees. Higher-efficiency furnaces may require a consumer to incur additional installation costs. DOE used data from RSMeans,[43] manufacturer literature, and expert consultants to estimate the installation cost, including labor costs, for oil and weatherized gas furnaces. DOE's analysis of installation costs accounted for regional differences in labor costs by aggregating city-level labor rates from RSMeans into the 50 distinct State plus Washington DC to match RECS 2015 and CBECS 2012 data. The installation cost methodology accounts for all potential installation cases, including when a noncondensing furnace is replaced with a condensing furnace, with particular attention to venting issues in replacement applications (*see* descriptions which follow). The installation cost also depends on the furnace installation location, which DOE determined using information from RECS 2015 and CBECS 2012.

For NWOF *replacement* installations, DOE included a number of additional costs (''adders'') for a fraction of the sample households that have particular features. For noncondensing furnaces, these additional costs included updating flue vent connectors, vent resizing, and chimney relining. For condensing furnaces, these additional costs included adding a new flue vent

[42] U.S. Department of Labor, Bureau of Labor Statistics, Produce Price Indices Series ID PCU333415333415C (Available at: *www.bls.gov/ppi/*) (Last accessed August 1, 2023).

[43] RSMeans Company Inc., RSMeans Cost Data. Kingston, MA (2023) (Available at: *www.rsmeans.com/products/books/2023-cost-data-books*) (Last accessed August 1, 2023).

(PVC), adding combustion air vent for direct vent installations (PVC), adding concealing vent pipes for indoor installations, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), and removing condensate, all based on manufacturer installation manuals and expert consultant input. Freeze protection (heat tape) is accounted for in the cost of condensate removal for a fraction of NWOFs installed in unconditioned attics.

For WGF installations, DOE included additional cost adders for condensing WGFs to dispose of the condensate created and to prevent freezing of the condensate, as the entire product is outdoors based on manufacturer installation manuals, field study reports, and expert consultant input. DOE also accounted for a fraction of installations in colder climates that could require freeze protection (heat tape), a condensate line being buried below the frost line, or a condensate pump.

AHRI commented that for WGFs installed in rooftop applications, heated drain lines are needed for winter use to avoid building water damage. AHRI added that condensate lines running within the unit are difficult to access and could have the potential to trap condensate. (AHRI, No. 23 at p. 5) JCI stated that while DOE considered the use of heat tape, the practical application/maintenance of heat tape internal to installed systems poses an undue installation and maintenance burden. (JCI, No. 25 at p. 2)

As explained in section IV.D of this document, DOE accounted for heat tape use in cases when a WGF is installed in an outdoor environment that could face freezing conditions. DOE assumed that the installation location would be facing freezing conditions based on the outdoor heating design temperature (or the 99th percentile). For the WGF sample, which is largely in warmer parts of the country, DOE estimated that about five percent would require heat tape. For another five percent of installations, DOE accounted for the use of a condensate pump. Furthermore, DOE accounts for other condensate costs such as adding condensate piping, running condensate lines through the ground or inside the WGF unit and into the building, using condensate neutralizer, adding an electrical outlet for heat tape or condensate pump, adding a drain pan, and adding a non-corrosive drain. On average, the installation cost adder across these scenarios is $110.

For further information on the derivation of installation costs, see chapter 7 of the November 2022 Preliminary Analysis TSD.

3. Annual Energy Consumption

For each sampled household or commercial building, DOE determined the energy consumption for oil and weatherized gas furnace at different efficiency levels using the approach described previously in section IV.D of this document.

4. Energy Prices

DOE derived 2022 annual residential and commercial electricity prices by state from EIA Form 861M data.[44] DOE obtained 2022 annual residential and commercial natural gas prices by state from EIA's Natural Gas Navigator.[45] DOE collected 2021 average LPG and fuel oil prices by state from EIA's 2021 State Energy Consumption, Price, and Expenditures Estimates (''SEDS'') and scaled to 2022 prices using *AEO2023* data.[46] To determine monthly prices for use in the analysis, DOE developed monthly energy price factors for each fuel based on long-term monthly price data. Monthly electricity and natural gas prices were adjusted using seasonal marginal price factors to determine monthly marginal electricity and natural gas prices. These marginal energy prices were used to determine the cost to the consumer of the change in energy consumed. Because marginal price data is only available for residential electricity and natural gas, DOE only developed marginal monthly prices for these fuels. For LPG and fuel oil, DOE used average monthly prices.

To estimate energy prices in future years, DOE multiplied the 2022 energy prices by the projection of annual average price changes for each state from the Reference case in *AEO2023,* which has an end year of 2050.[47] To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2046 through 2050. See chapter 8 of the November 2022 Preliminary Analysis TSD for details.

NYSERDA recommended that DOE consider applying a correction factor to account for potential gaps between forecasted prices and actual prices for energy, particularly in oil and natural gas. NYSERDA provided data depicting the heating oil prices within New York over a 23-year period and noted that there is significant variation in the time series. The commenter encouraged DOE to assemble multiple *AEO* reports for historic forecasts to determine a correction factor based on the comparison of actual prices to forecasted prices. NYSERDA added that this correction factor could then be applied to future forecasted prices to produce a more accurate result while still using EIA's price forecasts. (NYSERDA, No. 19 at pp. 4–5)

In response to NYSERDA, DOE acknowledges that forecasted prices do not always accurately predict future prices. However, DOE does not agree that past discrepancies between the two can reliably be used to adjust EIA's forecasts, as there is not a firm basis for assuming that historic factors will develop in the same way in the future. For this reason, DOE is maintaining its practice of relying on *AEO's* energy price forecasts.

The Joint Commenters reiterated their comments made in response to DOE's 2022 Request for Information pertaining to concerns with DOE's reliance on allegedly incorrect projections of natural gas price trends, marginal residential natural gas prices, and systematic problems with DOE's economic analysis. The Joint Commenters added that these earlier comments highlight flaws in DOE's process and stated that these flaws must be addressed both in this and future rulemakings before proposing any new minimum efficiency standards for appliances. (Joint Commenters, No. 24 at p. 3)

In response to the Joint Commenters, DOE acknowledges that past projections of natural gas prices have not matched actual prices in recent years, but DOE maintains that this is due to factors that were difficult to predict and not to any flaws in the model that is used to develop *AEO* energy price projections, or to biases with regard to assumptions.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. The maintenance and repair costs (including labor hours, component costs, and frequency) at each considered efficiency level are derived based on *2023 RSMeans Facilities Maintenance and*

[44] U.S. Department of Energy-Energy Information Administration, Form EIA–861M (formerly EIA–826) detailed data (2022) (Available at: *www.eia.gov/electricity/data/eia861m/*) (Last accessed August 1, 2023).

[45] U.S. Department of Energy-Energy Information Administration, Natural Gas Navigator (2022) (Available at: *www.eia.gov/naturalgas/data.php*) (Last accessed August 1, 2023).

[46] U.S. Department of Energy-Energy Information Administration, 2021 State Energy Data System (SEDS) (2021) (Available at: *www.eia.gov/state/seds/*) (Last accessed August 1, 2023).

[47] EIA, *Annual Energy Outlook 2023 with Projections to 2050* (Available at: *www.eia.gov/forecasts/aeo/*) (Last accessed June 1, 2023).

Repair Data,[48] manufacturer literature, consultant input, and industry reports. DOE also accounted for regional differences in labor costs based on these 2023 RSMeans data.

DOE assumes that condensing furnaces have a higher maintenance cost than noncondensing furnaces, but that this maintenance cost is the same at all noncondensing or condensing efficiency levels within each product class. The additional maintenance cost for condensing furnaces includes maintenance tasks related to the condensate withdrawal system (such as condensate pump or condensate neutralizer filter) and additional maintenance related to the cleaning or checking of the heat exchanger (in particular, for condensing oil-fired furnaces using high-sulfur fuel oil).

DOE also assumes that condensing furnaces have a higher repair cost than noncondensing furnaces, but the repair cost is the same at all non-condensing or condensing efficiency levels within each product class.

For more details on DOE's methodology for calculating maintenance and repair costs, including all online resources reviewed, *see* appendix 8E of the November 2022 Preliminary Analysis TSD.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of furnace lifetimes based on the methodology described in a recent journal paper.[49] For this analysis, DOE relied on RECS 1990, 1993, 2001, 2005, 2009, and 2015.[50] DOE also used the U.S. Census's biennial American Housing Survey (''AHS''), from 1974–2021, which surveys all housing, noting the presence of a range of appliances.[51] DOE used the appliance age data from these surveys, as well as the historical furnace shipments, to generate an estimate of the survival function. The survival function provides a lifetime range from minimum to maximum, as well as an average lifetime. For oil and weatherized gas furnaces, DOE developed Weibull distributions resulting in an average lifetime of 20.2 to 22.5 years (based on region).

Appendix 8F of the November 2022 Preliminary Analysis TSD provides further details on the methodology and sources DOE used to develop the subject furnace lifetimes.

7. Discount Rates

The discount rate is the rate at which future expenditures and savings are discounted to establish their present value. DOE estimates discount rates separately for residential and commercial end users.

For residential end users, DOE applies weighted-average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates. DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (''SCF''). Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions.

For commercial end users, DOE estimated the weighted-average cost of capital using data from various financial sources. The weighted-average cost of capital is commonly used 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 their cost of capital is the weighted average of the cost to the firm of equity and debt financing.

See appendix 8G of the November 2022 Preliminary Analysis TSD for further details on the development of discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (*i.e.,* market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards) in the compliance year (2030). This approach reflects the fact that some consumers may purchase products with efficiencies greater than the baseline levels, such that even in a no-new-standards case, consumers will be purchasing higher-efficiency furnaces.

For consumer furnaces, DOE had limited historical-shipments data by efficiency level. For NWOFs/MHOFs, DOE reviewed market shares from HARDI 2013–2022 data and BRG 2007–2022 data.[52] [53] The shipments data are not disaggregated between NWOFs and MHOFs, but DOE assigned all shipments data below 83-percent AFUE to MHOFs. For WGFs, DOE had insufficient historical shipments data by efficiency level to develop a reliable efficiency distribution. To cover the lack of available shipments data, DOE referred to the DOE's Compliance Certification Database (''CCD'') [54] for furnaces to develop efficiency distributions based on available models for WGFs.

The estimated market shares for the no-new-standards case for oil and weatherized gas furnaces are shown in Table IV.16. See chapter 8 of the November 2022 Preliminary Analysis TSD for further information on the derivation of the efficiency distributions.

[48] RSMeans Company Inc., *RSMeans Facilities Maintenance & Repair Cost Data* (2023) (Available at: *www.rsmeans.com/*) (Last accessed August 1, 2023).

[49] Lutz, J., A. Hopkins, V. Letschert, V. Franco, and A. Sturges, Using national survey data to estimate lifetimes of residential appliances, *HVAC&R Research* (2011) 17(5): p. 28. (Available at: *www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166)* (Last accessed August 1, 2023).

[50] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey (''RECS''),* Multiple Years (1990, 1993, 1997, 2001, 2005, 2009, and 2015). (Available at: *www.eia.gov/consumption/residential/)* (Last accessed August 1, 2023).

[51] U.S. Census Bureau: Housing and Household Economic Statistics Division, *American Housing Survey,* Multiple Years (1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019, and 2021). (Available at: *www.census.gov/programs-surveys/ahs/*) (Last accessed August 1, 2023).

[52] Heating, Air-conditioning and Refrigeration Distributors International (HARDI), DRIVE portal (HARDI Visualization Tool managed by D+R International until 2022), proprietary Gas Furnace Shipments Data from 2013–2022 provided to Lawrence Berkeley National Laboratory (LBNL).

[53] BRG Building Solutions. The North American Heating & Cooling Product Markets (2022 Edition) (Available at: *www.brgbuildingsolutions.com/reports-insights*) (Last accessed August 1, 2023).

[54] U.S. Department of Energy Compliance Certification Database (''CCD'') (Available at: *www.regulations.doe.gov/certification-data/*) (Last accessed August 1, 2023).

TABLE IV.16—NO-NEW-STANDARDS CASE ENERGY EFFICIENCY DISTRIBUTIONS IN 2030 FOR OIL AND WEATHERIZED GAS FURNACES

Product class	Efficiency level	Distribution (%)
NWOF	Baseline	37.2
	1	60.0
	2	1.5
	3	1.3
MHOF	Baseline	95
	1	2
	2	3
	3	0
WGF	Baseline	96
	1	4

AHRI and Lennox stated that model counts from the public database do not reflect model or sales volume and that a high number of models at a specific efficiency level does not imply a large market share of those products. (AHRI, No. 23 at p. 4; Lennox, No. 26 at p. 3) Lennox stated that industry data for condensing weatherized gas furnaces indicate that the market adoption of these products has been *de minimis.* (Lennox, No. 26 at p. 8) NYSERDA commented that within New York's relatively cold climate, new sales of electric and weatherized gas furnaces are minimal. However, NYSERDA noted that oil furnaces continue to be sold and installed throughout the State, with a 2019 study suggesting that most oil furnaces being installed are of low efficiency. (NYSERDA, No. 19 at p. 1)

In response to AHRI and Lennox, as stated previously, to develop an efficiency distribution in the no-new-standards case, DOE used available historical shipments data by efficiency for NWOFs/MHOFs and made assumptions to disaggregate between NWOFs and MHOFs by AFUE. Due to limited information for WGF, DOE referred to CCD to develop efficiency distributions. DOE projected that condensing WGFs will continue to account for a minimal share of the WGF market in the no-new-standards case, which aligns with Lennox's characterization of the industry data for condensing weatherized gas furnaces. In response to NYSERDA, DOE's estimates of efficiency distribution align with the findings that most oil furnaces being installed are of low efficiency. DOE received no other data with which to further refine the estimates of the efficiency distribution, and as such, DOE has not changed its existing methodology.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

F. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[55] The shipments model takes an accounting approach in tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Lennox commented that DOE likely overstates shipments for gas furnaces. Lennox commented that the NWGF rulemaking and this rulemaking may significantly reduce the market shares of these products. (Lennox, No. 26 at p. 2) Lennox commented that NWOFs and EFs are each less than one percent of the consumer furnace market. (*Id.* at p. 1) Lennox stated that DOE's projections of a growing market for residential furnaces are inconsistent with federal and state policy efforts to electrify space heating in residences. (Lennox, No. 26 at p. 2) Lennox commented that decarbonization efforts to electrify space heating will have impacts on both the total market for furnaces, as well as the categories thereof. (*Id.*) Lennox commented that States such as California and New York, which represent approximately 8 to 12 percent of the annual furnace shipments, are implementing plans to completely electrify space heating as soon as 2030. (*Id.*) In addition, Lennox stated that furnace costs are likely to increase, resulting in a reduction in the market. (*Id.* at p. 3) Lennox commented that the information presented in the preliminary TSD similarly indicates a growing market for furnaces, in contrast to federal, state, and local efforts to decarbonize space heating. Lennox commented that gas furnace shipments will decline in the time period associated with this rulemaking, and further DOE action should reflect a substantial reduction in the market for furnaces that consume fossil fuels. (*Id.* at p. 8)

[55] 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.

In response, DOE notes that assumptions made in the November 2022 Preliminary Analysis regarding future policies encouraging electrification of households were speculative at that time, so such policies were not incorporated into the shipments projection. Consequently, DOE's market share and shipments projections in the November 2022 Preliminary Analysis reflected the best information available to DOE at that time. For the NOPD, DOE accounted for the 2022 update to Title 24 in California [56] and also the decision of the California Public Utilities Commission to eliminate ratepayer subsidies for the extension of new gas lines beginning in July 2023. Together, these policies are expected to lead to the eventual phase-out of gas furnaces in new single-family homes in California. The California Air Resources Board has adopted a 2022 State Strategy for the State Implementation Plan that would effectively ban sales of new gas furnaces beginning in 2030.[57] However, because a final decision on a rule would not happen until 2025, DOE did not include this latter policy in its analysis for this NOPD.

DOE understands that ongoing electrification policies at the federal, State, and local levels are likely to encourage installation of heat pumps in some new homes and adoption of heat pumps in some homes that currently use gas or oil-fired furnaces. However, there are many uncertainties about the timing and effects of these policies that make it difficult to fully account for their likely impact on gas or oil furnaces market shares in the time frame for this analysis (*i.e.,* 2030 through 2059). Nonetheless, DOE has modified some of its projections to attempt to account for impacts that are most likely in the relevant time frame.[58] These changes result in a decrease of shipments in the no-new-standards case in 2030 compared to the November 2022 Preliminary Analysis, with a corresponding decrease in estimated energy savings resulting from the standards. DOE acknowledges that electrification policies may result in a larger decrease in shipments of gas furnaces than projected in this NOPD, especially if stronger policies are adopted in coming years. However, this would occur in the no-new amended standards case and, thus, would only reduce the energy savings estimated in this NOPD.

G. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended energy conservation standards at specific efficiency levels.[59] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[60] For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of oil and weatherized gas furnaces sold from 2030 through 2059.

DOE evaluates the effects of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each EL. 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.17 summarizes the inputs and methods DOE used for the NIA analysis for the NOPD. Discussion of these inputs and methods follows the table. *See* chapter 10 of the November 2022 Preliminary Analysis TSD for details.

TABLE IV.17—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Input	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2030.
Efficiency Trends	No-new-standards case: Based on historical data. Standards cases: Roll-up in the compliance year and then DOE estimated growth in shipment-weighted efficiency in all the standards cases, except max-tech.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each EL. Incorporates projection of future energy use based on *AEO2023* projections for HDD/CDD and building shell efficiency index.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual weighted-average values increase for condensing levels.
Energy Prices	*AEO2023* projections (to 2050) and extrapolation after 2050.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2023*.

[56] The 2022 update includes heat pumps as a performance standard baseline for water heating or space heating in single-family homes, as well as space heating in multi-family homes. Under the California Code, builders will need to either include one high-efficiency heat pump in new constructions or subject those buildings to more-stringent energy efficiency standards.

[57] See *ww2.arb.ca.gov/resources/documents/2022-state-strategy-state-implementation-plan-2022-state-sip-strategy* (Last accessed June 2, 2023).

[58] Based on currently adopted policies and incentives, DOE estimated a lower saturation in the new construction market and a higher product switching rate for the replacement market for gas and oil furnaces for the NOPD shipments analysis. This change resulted in a decrease of 11 percent for WGFs, 62 percent for NWOF, and 68 percent for MHOF for the no-new-standards case projection of total shipments between 2030 and 2059 compared to the preliminary analysis.

[59] The NIA accounts for impacts in the U.S. and U.S. territories.

[60] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

TABLE IV.17—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Input	Method
Discount Rate	Three percent and seven percent.
Present Year	2023.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.E.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard (2030).

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 (2030). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

To develop standards case efficiency trends after 2030, DOE estimated growth in shipment-weighted efficiency in the standards cases, except in the max-tech standards case.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher-efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2023.* For natural gas and LPG, DOE assumed that site energy consumption is the same as primary energy consumption. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. For oil and weatherized gas furnaces, DOE applied a rebound effect of 15 percent for residential applications by reducing the site energy savings (and the associated primary and FFC energy savings). However, for commercial applications, DOE applied no rebound effect in order to be consistent with other recent standards rulemakings.

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 NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [61] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The general approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the November 2022 Preliminary Analysis TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) total annual installed cost; (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.E.1 of this document, DOE developed oil and weatherized gas furnace price trends based on historical PPI data and cumulative shipments. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2059, which is the end date of the projection period, the average oil and weatherized gas furnace price is projected to drop 17 percent relative to 2022. DOE's projection of product prices is described further in chapter 10 of the November 2022 Preliminary Analysis TSD.

The operating cost savings are calculated as energy cost savings minus any repair and maintenance cost increases. 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 national-average energy prices derived in the LCC analysis by the projection of annual national-average residential (or commercial, as appropriate) energy price changes in the Reference case from *AEO2023,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2046 through 2050. Repair and maintenance cost for each of the efficiency levels is calculated in the LCC, and repair and maintenance cost increases are calculated as the repair and maintenance cost differential between efficiency levels.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPD, 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

[61] For more information on NEMS, refer to *The National Energy Modeling System: An Overview May 2023,* DOE/EIA, May 2023 (Available at: *www.eia.gov/analysis/pdfpages/0581(2009)index.php*) (Last accessed June 27, 2023).

guidance provided by the Office of Management and Budget (''OMB'') to federal agencies on the development of regulatory analysis.[62] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for oil and weatherized gas furnaces. It addresses the ELs examined by DOE (see section IV.B.1 of this document) and the projected impacts of each of these levels if adopted as energy conservation standards for the subject furnaces. Additional details regarding DOE's analyses are contained in the November 2022 Preliminary Analysis TSD supporting this document.

A. Economic Impacts on Individual Consumers

DOE analyzed the cost-effectiveness (*i.e.,* the savings in operating costs throughout the estimated average life of oil and weatherized gas furnaces compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, oil and weatherized gas furnaces which are likely to result from the imposition of a standard) at an EL by considering the LCC and PBP at each EL. These analyses are discussed in the following sections.

In general, higher-efficiency products can affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the November 2022 Preliminary Analysis TSD provides detailed information on the LCC and PBP analyses.

Table V.1 to Table V.6 show the average LCC and PBP results for the ELs considered in this analysis for oil and weatherized gas furnaces, respectively. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the in the no-new-standards case in the compliance year (see section IV.E.8 of this document). The LCC and PBP results for oil and weatherized gas furnaces include both residential and commercial users. Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each EL. The savings refer only to consumers who are affected by a standard at a given EL. Those who already purchase a product with efficiency at or above a given EL are not affected. Consumers for whom the LCC increases at a given EL experience a net cost.

TABLE V.1—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR NWOF

Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	4,333	2,132	32,211	36,544	.....	22.2
1	4,392	2,086	31,528	35,920	1.3	22.2
2	4,451	2,043	30,876	35,327	1.3	22.2
3	5,898	1,920	29,212	35,110	7.4	22.2

Note: 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.

TABLE V.2—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR NWOF

Efficiency level	Life-cycle cost savings	
	Average LCC savings * (2022$)	Percentage of consumers that experience net cost (%)
1	608	0.5
2	820	1.4
3	1,015	37.0

Note: The savings represent the average LCC for affected consumers.

[62] United States Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) Section E (Available at: *www.whitehouse.gov/omb/information-for-agencies/circulars/*) (Last accessed June 28, 2023).

TABLE V.3—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR MHOF

Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	3,377	1,142	17,913	21,290	.....	22.6
1	3,465	1,107	17,371	20,836	2.5	22.6
2	3,523	1,085	17,030	20,553	2.5	22.6
3	3,581	1,063	16,705	20,286	2.6	22.6

Note: 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.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MHOF

Efficiency level	Life-cycle cost savings	
	Average LCC savings * (2022$)	Percentage of consumers that experience net cost (%)
1	452	0.8
2	724	0.9
3	971	1.0

Note: The savings represent the average LCC for affected consumers.

TABLE V.5—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR WGF

Efficiency level	Average costs (2022$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Baseline	5,533	471	7,215	12,748	.....	20.6
1	5,822	433	6,698	12,519	7.5	20.6

Note: 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.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR WGF

Efficiency level	Life-cycle cost savings	
	Average LCC savings * (2022$)	Percentage of consumers that experience net cost (%)
1	223	40.4

Note: The savings represent the average LCC for affected consumers.

NYSERDA commented that DOE does not specifically mention the types of consumer subgroups to be included in the analysis of this rulemaking. NYSERDA recommended that DOE include low-income customers as one of the subgroups for this analysis and include the percentage of monthly income spent on energy bills. (NYSERDA, No. 19 at p. 2) NYSERDA mentioned that the NWGF/MHGF rulemaking analysis found that a more-stringent standard was especially beneficial to low-income and senior-only households as compared to the overall population. The commenter argued that renters who pay their own energy bills will particularly benefit. NYSERDA encouraged DOE to continue such analysis for this rulemaking, as it anticipates a similar outcome to the NWGF/MHGF rulemaking. (*Id.* at pp. 2–3)

In response, because DOE has tentatively determined that amended standards for the products considered in this NOPD would not be economically justified, DOE has not conducted a consumer subgroup analysis.

NYSERDA encouraged DOE to report the fraction of customers who pay less than six percent of their monthly income in energy bills at each EL. The commenter asserted that such fraction would continue to increase at each EL with more-stringent standards, adding that this approach presents a more comprehensive framework to look at energy burdens reduced by appliance standards. NYSERDA recommended that this statistic should be a routine part of DOE's LCC subgroups analysis, especially for appliances involving natural gas and oil. (NYSERDA, No. 19 at p. 3)

As noted previously, DOE is not conducting a consumer subgroup analysis for this NOPD, but the Department may consider NYSERDA's recommendation as part of a future rulemaking.

B. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for oil and weatherized gas furnaces, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each EL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2030–2059). Table V.7 presents DOE's projections of the NES for each EL considered for oil and weatherized gas furnaces. The savings were calculated using the approach described in section IV.G of this document.

TABLE V.7—CUMULATIVE NATIONAL ENERGY SAVINGS FOR OIL AND WEATHERIZED GAS FURNACES; 30 YEARS OF SHIPMENTS

[2030–2059]

Product class	Efficiency level		
	1	2	3
	FFC Energy savings (quads)		
Non-Weatherized Oil Furnace	0.004	0.01	0.05
Mobile Home Non-Weatherized Oil Furnace	0.0004	0.001	0.001
Weatherized Gas Furnace	0.66	.....	.....

OMB Circular A–4 [63] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed determination, DOE undertook a sensitivity analysis using nine years, rather than 30 years, of product shipments. The choice of a nine-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.[64] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to oil and weatherized gas furnaces. 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 nine-year analytical period are presented in Table V.8. The impacts are counted over the lifetime of oil and weatherized gas furnaces purchased in 2030–2038.

TABLE V.8—CUMULATIVE NATIONAL ENERGY SAVINGS FOR OIL AND WEATHERIZED GAS FURNACES; 9 YEARS OF SHIPMENTS

[2030–2038]

Product class	Efficiency level		
	1	2	3
	FFC Energy savings (quads)		
Non-Weatherized Oil Furnace	0.002	0.01	0.02
Mobile Home Non-Weatherized Oil Furnace	0.0002	0.0004	0.001
Weatherized Gas Furnace	0.20	.....	.....

[63] U.S. Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) (Available at: *https://www.whitehouse.gov/omb/information-for-agencies/circulars/*) (Last accessed June 1, 2023).

[64] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6295(m)) If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

2. 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 ELs considered for oil and weatherized gas furnaces. In accordance with OMB's guidelines on regulatory analysis,[65] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.9 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2030–2059.

TABLE V.9—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR OIL AND WEATHERIZED GAS FURNACES; 30 YEARS OF SHIPMENTS

[2030–2059]

Discount rate	Product class	Efficiency level (EL)		
		1	2	3
		Billion 2022$		
3%	Non-Weatherized Oil Furnace	0.06	0.20	0.20
	Mobile Home Non-Weatherized Oil Furnace	0.01	0.01	0.01
	Weatherized Gas Furnace	1.88	.....	.....
7%	Non-Weatherized Oil Furnace	0.02	0.08	0.03
	Mobile Home Non-Weatherized Oil Furnace	0.002	0.003	0.005
	Weatherized Gas Furnace	0.45	.....	.....

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.10. The impacts are counted over the lifetime of oil and weatherized gas furnaces purchased in 2030–2038. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.10—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR OIL AND WEATHERIZED GAS FURNACES; 9 YEARS OF SHIPMENTS

[2030–2038]

Discount rate	Product class	Efficiency level (EL)		
		1	2	3
		Billion 2022$		
3%	Non-Weatherized Oil Furnace	0.03	0.11	0.12
	Mobile Home Non-Weatherized Oil Furnace	0.003	0.01	0.01
	Weatherized Gas Furnace	0.67	.....	.....
7%	Non-Weatherized Oil Furnace	0.02	0.05	0.02
	Mobile Home Non-Weatherized Oil Furnace	0.002	0.003	0.004
	Weatherized Gas Furnace	0.22	.....	.....

C. Proposed Determination

After carefully considering the comments on the November 2022 Preliminary Analysis and the available data and information, DOE has tentatively determined that the energy conservation standards for oil, electric, and weatherized gas furnaces do not need to be amended, for the reasons explained in the paragraphs immediately following. DOE will consider all comments received on this proposed determination prior to issuing the next document in this rulemaking proceeding.

As required by EPCA, this NOPD analyzes whether amended standards for oil, electric, and weatherized gas furnaces would result in significant conservation of energy, be technologically feasible, and be cost-effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) DOE's initial findings under the enumerated statutory criteria and the additional analysis are discussed in the paragraphs that follows. Because an analysis of potential cost-effectiveness and energy savings first requires an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then addresses the cost-effectiveness and energy savings associated with potential amended standards for the subject furnaces.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for oil, electric, and weatherized gas furnaces would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(B)) DOE has tentatively determined that there are technology options that would improve the efficiency of oil and weatherized gas furnaces. These technology options are being used in commercially available oil and weatherized gas furnaces and, therefore, are technologically feasible. (See section IV.A.3 of this document for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for oil and weatherized gas furnaces are technologically feasible. However, as discussed in section IV.A.1.a of this document, DOE is not aware of any technology options that would improve the efficiency of electric furnaces.

[65] U.S. Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) (Available at: *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*) (Last accessed June 1, 2023).

Therefore, DOE has tentatively determined that amended energy conservation standards for electric furnaces are not technologically feasible.

2. Cost-Effectiveness

EPCA requires DOE to consider whether energy conservation standards for oil and weatherized gas furnaces would be cost-effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of an amended standard. (42 U.S.C. 6295(m)(1)(A), 42 U.S.C. 6295(n)(2)(C), and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficiency in the considered oil and weatherized gas furnace product classes. As shown in Table V.1 through Table V.6, for all product classes, all of the considered efficiency levels result in positive LCC savings, with the percentage of consumers experiencing net cost ranging from 0.5 percent at EL 1 to 37 percent at max-tech for NWOF, approximately 1 percent at all ELs for MHOF, and 40 percent at the only considered efficiency level for WGF.

DOE then aggregated the results from the LCC analysis to estimate the NPV of the total costs and benefits experienced by the Nation. (See results in Table V.9 and Table V.10) As noted, the inputs for determining the NPV 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.

3. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for oil and weatherized gas furnaces would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(A))

To estimate the energy savings attributable to potential amended standards for oil and weatherized gas furnaces, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each potential standard level. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2030–2059).

As shown in Table V.7, DOE estimates that amended standards would results in FFC energy savings of 0.004 quads at EL 1 to 0.05 quads at max-tech level for non-weatherized oil furnaces, 0.0004 quads at EL 1 to 0.001 quads at max-tech level for mobile home non-weatherized oil furnaces, and 0.66 quads at EL 1 (max-tech level) for weatherized gas furnaces, over a 30-year analysis period (2030–2059).

4. Further Considerations

Oil Furnaces

DOE estimates that the shipments of NWOFs and MHOFs have declined by more than 70 percent over the past 20 years and only accounted for less than one percent of the overall consumer furnace market in the past 10 years. DOE considered this declining trend and the small market share for oil furnaces in the furnace shipments model and projected that the shipments of NWOFs and MHOFs will continue to decline over the analysis period (*i.e.,* 2030–2059). DOE also considered that the shipments of NWOFs and MHOFs could decline faster than current projections, which may lead to further reductions in energy savings from potential amended standards.

As the oil furnace market contracted, the industry has seen consolidation. DOE estimates there were 11 OEMs of NWOF selling into the U.S. market at the time of the June 2011 DFR that set current standard levels for oil furnaces. Since then, manufacturers have merged, been acquired, and left the market. Currently there are seven OEMs of NWOF selling into the U.S. market.

DOE estimated the NWOF market to be approximately 36,000 units per year and the MHOF market to be approximately 2,000 units per year in 2023. These products together are less than one percent of the overall U.S. residential furnace market, which is approximately 4.2 million shipments per year in 2023. The size of the market could make cost recovery challenging for manufacturers. With the small market size and continued trend of diminishing sales, the timeframe for recouping investments may be longer than acceptable for manufacturers. Given the small role of oil furnaces in the overall furnace market and the low sales relative to the consumer boiler and consumer water heater markets, manufacturers may de-prioritize updates for these product classes. The existing oil-fired furnace market currently has a diversity of competitors; however, the loss of a few manufacturers could lead to shifts in market competition.

Weatherized Gas Furnaces

DOE estimates that the shipments of WGFs have been approximately 0.35 million per year for the past 10 years and accounted for approximately 7 percent of the overall consumer furnace market over the past 20 years. DOE considered the small market share for WGFs in the furnace shipments model and projected that the shipments of WGFs will be approximately flat and account for less than 8 percent of the overall consumer furnace market over the analysis period (*i.e.,* 2030–2059). DOE also considered that the shipments of WGFs could be less than current projections, which may lead to reductions in energy savings from potential amended standards.

WGFs have the largest potential energy savings of the product classes in this rulemaking. However, DOE recognizes challenges for the industry at the max-tech level, which requires condensing furnace designs. DOE identified eight OEMs of weatherized gas furnaces. Only one OEM offers models that can meet the max-tech level. Models that meet the max-tech level account for 1 percent of all WGF listings.

All other OEMs would need to invest in new WGF designs to meet a condensing efficiency level. DOE expects that developing a new condensing model lines would require significant investment. If manufacturers plan to continue offering the same diversity of models, they would need to redesign nearly 1,500 basic models, or 99 percent of what is available on the market today. Designing condensing models would require the incorporation of a secondary heat exchanger and condensate management system. Manufacturers would likely need to reconfigure their existing heat exchanger to optimize airflow over the secondary heat exchanger, which could require investments in product redesign and retooling for hard-tooled portions of the heat exchanger. Manufacturers may also have to choose between adding the secondary heat exchanger within the physical limitations of the existing chassis dimension or adopting a new chassis size, which has the potential to be capital intensive. The added production of the secondary heat exchanger could necessitate additional floor space and increased assembly and fabrication times.

DOE observed that the range of heating capacities offered at EL 1 do not cover the same range of capacities as non-condensing models. Condensing WGF models range from 60 to 96 kBtu/h, whereas non-condensing WGF

models span capacities from 40 to 150 kBtu/h. DOE is concerned that amended standards for WGFs may limit capacity availability for consumers.

5. Summary

As discussed previously, a determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost-effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, DOE can only propose an amended standard if it is, among other things, economically justified. (42 U.S.C. 6295(m)(1)(B); 42 U.S.C. 6295(o)(2)(A))

As explained elsewhere in this document, DOE has tentatively determined that amended energy conservation standards for electric furnaces are not technologically feasible. Oil-fired furnaces and WGFs have relatively small markets and shipments of these products are expected to flatten or decline; manufacturers facing increased standards for these product categories may opt to focus on products with larger market shares, resulting in certain products or capacities becoming unavailable for consumers as well as further consolidation of the market. Consequently, DOE has tentatively determined that it is unable to conclude that amended standards for oil-fired furnaces and WGFs would be economically justified. For these reasons, as well as those discussed throughout this notice, DOE is unable to conclude that amended standards for furnaces at any of the efficiency levels analyzed would meet the applicable statutory criteria. Therefore, DOE has tentatively determined that energy conservation standards for oil, electric, and weatherized gas furnaces do not need to be amended at this time.

DOE requests comments on its proposed determination that the existing energy conservation standards for oil, electric, and weatherized gas furnaces do not need to be amended. DOE will consider all comments received on this proposed determination before issuing the next document in this proceeding.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this 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 does not constitute a ''significant regulatory action'' within the scope of section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') and a final regulatory flexibility analysis (''FRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies in the **Federal Register** 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 (*energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is proposing not to amend standards for oil, electric, and weatherized gas furnaces, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that amended energy conservation standards for oil, electric, and weatherized gas furnaces are unneeded under the applicable statutory criteria, would impose no new informational or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action 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 actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for

categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and 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 action.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 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 determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 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,'' 61 FR 4729 (Feb. 7, 1996), imposes on federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 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 determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each federal agency to assess the effects of federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a 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 *energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed determination 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 NOPD 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 the Office of Information and Regulatory Affairs (''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 Executive 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.

This proposed determination, which does not propose to amend energy conservation standards for oil, electric, and weatherized gas furnaces, is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Therefore, it is not a significant energy action, and accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

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.'' *Id.* at 70 FR 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 Peer Review report pertaining to the energy conservation standards rulemaking analyses.[66] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences (''NAS'') to review DOE's analytical methodologies and ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting December 2021 report.[67]

VII. Public Participation

A. Participation in the Public Meeting Webinar

DOE will hold a public meeting webinar upon receiving a request by the deadline identified in the **DATES** section at the beginning of this proposed determination. Interested persons may submit their request for the public meeting webinar to the Appliance and Equipment Standards Program at *OEWGFurnaces2021STD0031@ee.doe.gov.* If a public meeting webinar is requested, DOE will release webinar registration information, participant instructions, and information about the capabilities available to webinar participants on DOE's website at: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=59.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, *see* the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email

[66] ''Energy Conservation Standards Rulemaking Peer Review Report'' (2007) (Available at: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0*) (Last accessed June 26, 2023).

[67] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards* (Last accessed June 26, 2023).

address, telephone number, and optional mailing address. With this instruction followed, 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).

C. Issues on Which DOE Seeks Comment

Although DOE has not identified any specific issues on which it seeks comment, DOE welcomes comments on any aspect of this proposed determination.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination and request for comment.

Signing Authority

This document of the Department of Energy was signed on November 17, 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 November 17, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–25869 Filed 11–28–23; 8:45 am]

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