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Rules and Regulations

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

RIN 3133–AF54

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Gira Bose, Senior Staff Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Legal Background

A. Statutory Requirements

Every Federal agency, including the NCUA, is required by law to adjust its maximum CMP amounts each year to account for inflation. Prior to this being an annual requirement, agencies were required to adjust their CMPs at least once every four years. The previous four-year requirement stemmed from the Debt Collection Improvement Act of 1996,[1] which amended the Federal Civil Penalties Inflation Adjustment Act of 1990.[2]

The current annual requirement stems from the Bipartisan Budget Act of 2015,[3] which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).[4] This legislation provided for an initial ''catch-up'' adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment reset CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculated inflation with reference to the year when each CMP was enacted or last modified by Congress. Agencies were required to publish their catch-up adjustments in an interim final rule by July 1, 2016, and make them effective by August 1, 2016.[5] The NCUA complied with these requirements in a June 2016 interim final rule, followed by a November 2016 final rule to confirm the adjustments as final.[6]

The 2015 amendments also specified how agencies must conduct annual inflation adjustments after the 2016 catch-up adjustment. Following the catch-up adjustment, agencies must make the required adjustments and publish them in the **Federal Register** by January 15 each year.[7] For 2017, the NCUA issued an interim final rule on January 6, 2017,[8] followed by a final rule issued on June 23, 2017.[9] For each of the years 2018 through 2022, the NCUA issued a final rule to satisfy the agency's annual requirements.[10] This final rule satisfies the agency's requirement for the 2023 annual adjustment.

The law provides that the adjustments shall be made notwithstanding the section of the Administrative Procedure Act (APA) that requires prior notice and public comment for agency rulemaking.[11] The 2015 amendments also specify that each CMP maximum must be increased by the percentage by which the consumer price index for urban consumers (CPI–U) [12] for October of the year immediately preceding the year the adjustment is made exceeds the CPI–U for October of the prior year.[13] Thus, for the adjustment to be made in 2023, an agency must compare the October 2021 and October 2022 CPI–U figures.

An annual adjustment under the 2015 amendments is not required if a CMP has been amended in the preceding 12 months pursuant to other authority. Specifically, the statute provides that an agency is not required to make an annual adjustment to a CMP if in the preceding 12 months it has been increased by an amount greater than the annual adjustment required by the 2015 amendments.[14] The NCUA did not make any adjustments in the preceding 12 months pursuant to other authority. Therefore, this rulemaking adjusts all of the NCUA's CMPs pursuant to the 2015 amendments.

B. Application to the 2023 Adjustments and Office of Management and Budget Guidance

This section applies the statutory requirements and the Office of Management and Budget's (OMB) guidance to the NCUA's CMPs and sets forth the Board's calculation of the 2023 adjustments.

The 2015 amendments directed OMB to issue guidance to agencies on implementing the inflation adjustments.[15] OMB is required to issue its guidance each December and, with respect to the 2023 annual adjustment, did so on December 15, 2022.[16] For 2023, Federal agencies must adjust the maximum amounts of their CMPs by the percentage by which the October 2022

[1] Public Law 104–134, Sec. 31001(s), 110 Stat. 1321–373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), codified at 28 U.S.C. 2461 note.

[3] Public Law 114–74, 129 Stat. 584 (Nov. 2, 2015).

[4] 129 Stat. 599.

[5] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[6] 81 FR 40152 (June 21, 2016); 81 FR 78028 (Nov. 7, 2016).

[7] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[8] 82 FR 7640 (Jan. 23, 2017).

[9] 82 FR 29710 (June 30, 2017).

[10] 83 FR 2029 (Jan. 16, 2018); 84 FR 2052 (Feb. 6, 2019); 85 FR 2009 (Jan. 14, 2020); 86 FR 933 (Jan. 7, 2021), 87 FR 377 (Jan. 5, 2022).

[11] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[12] This index is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: *https://www.bls.gov/cpi/*.

[13] Public Law 114–74, Sec. 701(b)(2)(B), 129 Stat. 584, 600 (Nov. 2, 2015).

[14] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 600 (Nov. 2, 2015).

[15] Public Law 114–74, Sec. 701(b)(4), 129 Stat. 584, 601 (Nov. 2, 2015).

[16] See OMB Memorandum M–23–05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (December 15, 2022).

CPI–U (298.012) exceeds the October 2021 CPI–U (276.589). The resulting increase can be expressed as an inflation multiplier (1.07745) to apply to each current CMP maximum amount to determine the adjusted maximum. The OMB guidance also addresses rulemaking procedures and agency reporting and oversight requirements for CMPs.[17]

The table below presents the adjustment calculations. The current maximums are found at 12 CFR 747.1001, as adjusted by the final rule that the Board approved in December 2021. This amount is multiplied by the inflation multiplier to calculate the new maximum in the far-right column. Only these adjusted maximum amounts, and not the calculations, will be codified at 12 CFR 747.1001 under this final rule. The adjusted amounts will be effective upon publication in the **Federal Register** and can be applied to violations that occurred on or after November 2, 2015, the date the 2015 amendments were enacted.[18]

TABLE-CALCULATION OF MAXIMUM CMP ADJUSTMENTS

Citation	Description and tier[19]	Current maximum ($)	Multiplier	Adjusted maximum ($) (current maximum × multiplier, rounded to nearest dollar)
12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	4,404	1.07745	4,745.
12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	44,043	1.07745	47,454.
12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	Lesser of 2,202,123 or 1% of total credit union (CU) assets.	1.07745	Lesser of 2,372,677 or 1% of total CU assets.
12 U.S.C. 1782(d)(2)(A).	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to the National Credit Union Share Insurance Fund (NCUSIF), or inadvertent submission of false or misleading statement.	4,027	1.07745	4,339.
12 U.S.C. 1782(d)(2)(B).	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	40,259	1.07745	43,377.
12 U.S.C. 1782(d)(2)(C).	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	Lesser of 2,013,008 or 1% of total CU assets.	1.07745	Lesser of 2,168,915 or 1% of total CU assets.
12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements	137	1.07745	148.
12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security requirements	320	1.07745	345.
12 U.S.C. 1786(k)(2)(A).	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	11,011	1.07745	11,864.
12 U.S.C. 1786(k)(2)(B).	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	55,052	1.07745	59,316.
12 U.S.C. 1786(k)(2)(C).	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	2,202,123	1.07745	2,372,677.
12 U.S.C. 1786(k)(2)(C).	Tier 3 (same) (CU)	Lesser of 2,202,123 or 1% of total CU assets.	1.07745	Lesser of 2,372,677 or 1% of total CU assets.
12 U.S.C. 1786(w)(5)(A)(ii).	Non-compliance with senior examiner post-employment restrictions.	362,217	1.07745	390,271.
15 U.S.C. 1639e(k)	Non-compliance with appraisal independence standards (first violation).	12,647	1.07745	13,627.
15 U.S.C. 1639e(k)	Subsequent violations of the same	25,293	1.07745	27,252.
42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements	2,392	1.07745	2,577.

II. Regulatory Procedures

A. Final Rule Under the APA

In the 2015 amendments, Congress provided that agencies shall make the required inflation adjustments in 2017 and subsequent years notwithstanding 5 U.S.C. 553,[20] which generally requires agencies to follow notice-and-comment procedures in rulemaking and to make rules effective no sooner than 30 days after publication in the **Federal Register**. The 2015 amendments provide a clear exception to these requirements.[21] In addition, as an

[17] *Id.*

[18] Public Law 114–74, 129 Stat. 600 (Nov. 2, 2015).

[19] The table uses condensed descriptions of CMP tiers. Refer to the U.S. Code citations for complete descriptions.

[20] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[21] See 5 U.S.C. 559; *Asiana Airlines* v. *Fed. Aviation Admin.,* 134 F.3d 393, 396–99 (D.C. Cir. 1998).

independent basis, the Board finds that notice-and-comment procedures would be impracticable and unnecessary under the APA because of the largely ministerial and technical nature of the final rule, which affords agencies limited discretion in promulgating the rule, and the statutory deadline for making the adjustments.[22] In these circumstances, the Board finds good cause to issue a final rule without issuing a notice of proposed rulemaking or soliciting public comments. The Board also finds good cause to make the final rule effective upon publication because of the statutory deadline. Accordingly, this final rule is issued without prior notice and comment and will become effective immediately upon publication.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA [23] or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**.[24] Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers federally insured credit unions (FICUs) with assets less than $100 million to be small entities.[25]

As discussed previously, consistent with the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking.[26] Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board notes that this final rule will not have a significant economic impact on a substantial number of small credit unions because it affects only the maximum amounts of CMPs that may be assessed in individual cases, which are not numerous and generally do not involve assessments at the maximum level. In addition, several of the CMPs are limited to a percentage of a credit union's assets. Finally, in assessing CMPs, the Board generally must consider a party's financial resources.[27] Because this final rule will affect few, if any, small credit unions, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.[28] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, or credit unions but does not require any reporting or recordkeeping. Therefore, this final rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, and federally insured credit unions, including state-chartered credit unions. However, the final rule does not create any new authority or alter the underlying statutory authorities that enable the Board to assess CMPs. Accordingly, this final rule will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive order.

D. Assessment of Federal Regulations and Policies on Families

The Board has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[29]

F. Congressional Review Act

For purposes of the Congressional Review Act,[30] the OMB makes a determination as to whether a final rule constitutes a ''major rule.'' If the OMB deems a rule to be a ''major rule,'' the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. As required by the Congressional Review Act, the Board submitted the final rule and other appropriate reports to the OMB which determined that this rule is not a ''major rule.'' The Board will also be submitting this rule to Congress and the Government Accountability Office for review.

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.[31]

For the same reasons set forth above, the Board is adopting the 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 for 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 procedures thereon are impracticable, unnecessary, or contrary to the public interest.[32]

[22] 5 U.S.C. 553(b)(3)(B); see *Mid-Tex. Elec. Co-op., Inc.* v. *Fed. Energy Regulatory Comm'n,* 822 F.2d 1123 (D.C. Cir. 1987). For the same reasons, this final rule does not include the usual 60-day comment period under NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and 15–1 (Sept. 24, 2015).

[23] 5 U.S.C. 553(b).

[24] 5 U.S.C. 603, 604.

[25] NCUA IRPS 15–1.

[26] 5 U.S.C. 553(b)(3)(B).

[27] 12 U.S.C. 1786(k)(2)(G)(i).

[28] 44 U.S.C. 3507(d); 5 CFR part 1320.

[29] Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[30] 5 U.S.C. 801–808.

[31] 5 U.S.C. 804(2).

[32] 5 U.S.C. 808.

List of Subjects in 12 CFR Part 747

Civil monetary penalties, Credit unions.

By the National Credit Union Administration Board on January 4, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the Board amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; Pub. L. 114–74.

■ 2. Revise § 747.1001 to read as follows:

§ 747.1001 Adjustment of civil monetary penalties by the rate of inflation.

(a) The NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)), to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction by the rate of inflation. The following chart displays those adjusted amounts, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$4,745.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$47,454.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$2,372,677 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to the National Credit Union Share Insurance Fund (NCUSIF), or inadvertent submission of false or misleading statement.	$4,339.
(5) 12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	$43,377.
(6) 12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	$2,168,915 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements	$148.
(8) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security requirements	$345.
(9) 12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	$11,864.
(10) 12 U.S.C. 1786(k)(2)(B)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	$59,316.
(11) 12 U.S.C. 1786(k)(2)(C)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	$2,372,677.
(12) 12 U.S.C. 1786(k)(2)(C)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (insured credit union).	$2,372,677 or 1 percent of the total assets of the credit union, whichever is less.
(13) 12 U.S.C. 1786(w)(5)(A)(ii)	Non-compliance with senior examiner post-employment restrictions.	$390,271.
(14) 15 U.S.C. 1639e(k)	Non-compliance with appraisal independence requirements ...	First violation: $13,627; Subsequent violations: $27,252.
(15) 42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements	$2,577.

(b) The adjusted amounts displayed in paragraph (a) of this section apply to civil monetary penalties that are assessed after the date the increase takes effect, including those whose associated violation or violations pre-dated the increase and occurred on or after November 2, 2015.

[FR Doc. 2023–00212 Filed 1–9–23; 8:45 am]

BILLING CODE 7535–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 401, 403, 422, 423, and 429

[Docket No. SSA–2022–0051]

RIN 0960–AI78

Service of Process and Updated Addresses for Certain Communications With the Agency

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rules regarding service of legal process in lawsuits involving judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under title II, VIII, or XVI of the Social Security Act (Act) or individual claims for a Medicare Part D subsidy under title XVIII of the Act. We are revising our rules to provide that when summonses and complaints in these lawsuits are mailed, they should be sent to a central address, regardless of where the lawsuit is filed. We will also accept electronic service in these suits in accordance with the new Supplemental Rules for Social Security Actions, added to the Federal Rules of Civil Procedure (FRCP) effective December 1, 2022. Additionally, we are updating our headquarters address; removing obsolete references and past jurisdictional responsibilities of regional Office of the General Counsel (OGC) offices, which no longer exist; and making other minor editorial changes. We expect that these changes will make the service of process

for affected cases more streamlined and consistent with the FRCP.

DATES: This final rule is effective January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Deborah Stachel and Elizabeth Tino, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0600. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

OGC Reorganization and Mail Centralization

Our OGC is both restructuring its offices and centralizing its processes for handling incoming mail. Prior to the reorganization, there were ten regional OGC offices, in addition to three OGC offices at the agency's headquarters in Baltimore, MD. Each regional OGC office had a mailroom to handle OGC mail. Under the reorganization, there are now five offices within OGC (in addition to the Immediate Office): the Office of Legal Operations (OLO), the Office of General Law, the Office of Privacy and Disclosure (OPD),[1] the Office of Program Law, and the Office of Program Litigation. There are no ''regional OGC offices'' under the reorganized OGC.

Moving forward, OLO will centrally process all OGC mail and electronically distribute all incoming mail to the appropriate OGC office. Since a room number and building name are not required to process mail at headquarters, we are removing all room numbers and building names where they previously appeared in our regulations. In addition, we are removing all references to names, addresses, and jurisdictional responsibilities of OGC's regional offices because those regional offices no longer exist. We are adding an attention line to certain addresses to identify specific workloads where appropriate.

Additional Method for Service of Process

On December 9, 2005, we published final rules that revised our rules describing service of legal process in lawsuits involving judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under title II, VIII, or XVI of the Act.[2] Under those rules, we required summonses and complaints in such cases to be mailed directly to the OGC office that is responsible for the processing and handling of litigation in the jurisdiction in which the complaint was filed. In accordance with those rules, we have also periodically published in the **Federal Register** the names, addresses, and jurisdictional responsibilities of OGC's offices that handled program-related litigation, so that the public knew where to mail summonses and complaints in these cases.[3] As discussed above, the new centralized process for OGC mail means that plaintiffs sending summonses and complaints by mail should send that mail to an address at headquarters regardless of the jurisdiction in which they file suit. We are revising § 423.1(a) to reflect that change.

We are also removing the reference to **Federal Register** notices listing names, addresses, and jurisdictional responsibilities of regional OGC offices because that information is no longer necessary to accomplish service in these cases. This change supersedes and renders obsolete the prior **Federal Register** notices we published with instructions regarding those regional OGC offices.

We are also adding a reference to title XVIII of the Act because service of process in lawsuits involving judicial review of final decisions of the Commissioner of Social Security on individual claims for a Medicare Part D subsidy under title XVIII of the Act is—and has been—the same as in lawsuits involving judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under titles II, VIII, and XVI of the Act. This change will align the regulatory language with how service of process in these lawsuits has always been handled.

In addition, we are revising § 423.1(a) to explain that we will accept electronic service in the lawsuits described in that section as provided by the FRCP. The current language reflects the prior requirement in the FRCP that plaintiffs in these lawsuits must serve us with a summons and complaint by mail. Effective December 1, 2022, the Supplemental Rules for Social Security Actions Under 42 U.S.C. 405(g) were added to the FRCP. The Supplemental Rules provide the option for electronic service in these lawsuits.[4]

Under the new rules, plaintiffs in these cases are no longer required to serve a summons and complaint by mail on us, the United States Attorney's Office, and the Attorney General. Rather, the plaintiff need only file a complaint in district court in accordance with Rule 2 of the Supplemental Rules, and service is accomplished under Rule 3 by the district court's transmission of a ''Notice of Electronic Filing'' to the appropriate OGC office and United States Attorney's Office. We will accept electronic service in these cases,[5] and are updating our regulations to align them with the procedures for the processing and handling of cases affected by the new FRCP.

Explanation of Changes

As mentioned above, OGC is centralizing its mail processes for handling incoming mail. We are removing room numbers and building names from several regulatory sections because they are no longer required to process mail at our headquarters. We are also making other minor editorial changes. Accordingly, we are making changes to the following sections: 20 CFR 401.70, 403.120, 403.125, 422.848, 423.1, 423.3, 423.7, 429.102, 429.107, 429.201, and 429.202.

Sections 403.120, 423.1, 423.3, 429.102, and 429.202

In these sections, we are removing references to room numbers and building names from our headquarters address because these references are no longer needed under the new mail process. We are adding an attention line to identify specific workloads where appropriate and making minor stylistic changes.

Section 403.125

In this section, we are updating the address of our Office of the Inspector General (OIG) and including an email address for requests for records, information, or testimony involving OIG.

[1] Our current regulations refer to OPD as the Office of Public Disclosure in places, but for some time, OPD has been the Office of Privacy and Disclosure. In this final rule, we are updating OPD's name to the ''Office of Privacy and Disclosure.''

[2] 70 FR 73135 (2005).

[3] Recent notices containing these names, addresses, and jurisdictional responsibilities were published on November 30, 2020, at 85 FR 76651, and August 27, 2020, at 85 FR 53057.

[4] See Amendment and Addition to the Federal Rules of Civil Procedure: Communication from The Chief Justice, The Supreme Court of the United States. H.R. Doc. 117–110, at 5–13 (April 14, 2022) (available at: *https://www.govinfo.gov/content/pkg/CDOC-117hdoc110/pdf/CDOC-117hdoc110.pdf*); see also Current Rule of Practice and Procedure (available at: *https://www.uscourts.gov/rules-policies/current-rules-practice-procedure*).

[5] The new option of electronic service applies only to lawsuits described in § 423.1(a), not those described in §§ 423.1(b) and 423.3, or claims described in §§ 429.102 and 429.202.

Section 401.70

In this section, we are updating obsolete references to the Office of Public Disclosure. The office is named the ''Office of Privacy and Disclosure.''

Section 422.848

In this section, we are removing a reference to OGC's Regional Chief Counsel because that position no longer exists under OGC's reorganization.

Section 423.1

In this section, plaintiffs in certain lawsuits are advised of a new mailing address to which to direct service of process. We are removing the reference to **Federal Register** notices listing names, addresses, and jurisdictional responsibilities of regional OGC offices because those offices no longer exist under OGC's reorganization and that information is no longer necessary to accomplish service in these suits. OLO will handle and distribute OGC mail received at headquarters. Plaintiffs who use the traditional service by mail process will benefit from this simplified procedure because they will serve us at one address regardless of the jurisdiction in which they file suit.

We also explain that, effective December 1, 2022, we will accept electronic service of legal process in certain lawsuits—cases seeking judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under title II, VIII, or XVI of the Act and individual claims for a Medicare Part D subsidy under title XVIII of the Act—as provided by the FRCP. This change is designed to reduce delays on our part in responding to summonses and complaints, and to improve the efficiency of our litigation processes. Current procedures for service of summonses and complaints in all other types of lawsuits filed against us, *i.e.,* those that do not involve judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under title II, VIII, or XVI of the Act, or individual claims for a Medicare Part D subsidy under title XVIII of the Act, are not affected by this change.

Section 423.7

In this section, we are removing a reference to rule 4(e) of the FRCP because that rule no longer contains any information regarding acknowledgment of mailed process.

Sections 429.107 and 429.201

In these sections, we are removing unnecessary information and updating the title of the official designated to determine claims under the Military Personnel and Civilian Employees' Claims Act of 1964.

Table 1 summarizes the changes we are making in this final rule:

401.70	Updated OPD's name.
403.120	Removed building name and room #.
403.125	Updated OIG's address and added email address.
422.848	Removed obsolete reference to OGC Regional Chief Counsel.
423.1	Removed building name and room #, added reference to Medicare Part D subsidies, and added new service of process procedure.
423.3	Removed building name and room #.
423.7	Removed obsolete reference to rule 4(e) FRCP.
429.102	Removed building name and room #.
429.107	Removed unnecessary information.
429.201	Updated an official's title.
429.202	Removed building name and room #.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(A)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

We find that under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures on this rule. Good cause exists because this final rule merely conforms our rules on service of process to our internal distribution of responsibility for the handling and processing of litigation and reflects the addition of new rules to the FRCP effective December 1, 2022. The final rule contains no substantive changes in policy or interpretation and has no significant effect upon claimants for benefits or payments under the programs we administer. In addition, this final rule provides only rules of practice and procedure, which do not require public comment procedures. Therefore, we find that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find that there is good cause for dispensing with the 30-day delay in the effective date of this final rule as provided by 5 U.S.C. 553(d). As we explained above, this final rule makes minor editorial changes to several regulatory sections that conform to our new centralized mail procedures and reflect changes to the FRCP that are effective on December 1, 2022. Therefore, we find that it is unnecessary to delay the effective date of the final rule.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866, as supplemented by E.O. 13563. Thus, OMB did not review this final rule. We also determined that this final rule meets the plain language requirement of E.O. 12866.

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132 and determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities, because it affects individuals only. Therefore, a regulatory flexibility

analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule only removes obsolete references, updates current addresses, and updates language as needed to state that we can accept electronic service of legal process in certain lawsuits. Because the final rule does not create any new or affect any existing collections, it does not impose any burdens under the Paperwork Reduction Act (PRA), and does not require OMB approval under the PRA.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Freedom of information, Privacy Act.

20 CFR Part 403

Courts, Government employees, Reporting and recordkeeping requirements.

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

20 CFR Part 423

Administrative practice and procedure, Courts, Government employees.

20 CFR Part 429

Administrative practice and procedure, Claims, Government employees, Penalties.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary **Federal Register** Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we amend 20 CFR parts 401, 403, 422, 423, and 429 as set forth below:

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

■ 2. Amend § 401.70 by revising the first sentence of paragraph (a), the second sentence of paragraph (b)(1), paragraphs (b)(2)(i), (ii), and (iii), and the second sentence of paragraph (c) to read as follows:

§ 401.70 Appeals of refusals to correct records or refusals to allow access to records.

(a) * * * This section describes how to appeal decisions we make under the Privacy Act concerning your request for correction of or access to your records, those of your minor child, or those of a person for whom you are the legal guardian. * * *

(b) * * *

(1) * * * However, for a good reason and with the approval of the Executive Director for the Office of Privacy and Disclosure, we may extend this time limit up to an additional 30 days. * * *

(2) * * *

(i) Your request has been refused and the reason for the refusal;

(ii) The refusal is our final decision; and

(iii) You have a right to seek court review of our final decision.

* * * * *

(c) * * * You may appeal the denial decision to the Office of the General Counsel, Office of Privacy and Disclosure, Social Security Administration, Attn: Executive Director, 6401 Security Boulevard, Baltimore, MD 21235, within 30 days after you receive notice denying all or part of your request, or, if later, within 30 days after you receive materials sent to you in partial compliance with your request.

* * * * *

PART 403—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF RECORDS AND INFORMATION IN LEGAL PROCEEDINGS

■ 3. The authority citation for part 403 continues to read as follows:

Authority: Secs. 702(a)(5) and 1106 of the Act, (42 U.S.C. 902(a)(5) and 1306); 5 U.S.C. 301; 31 U.S.C. 9701.

■ 4. Amend § 403.120 by revising paragraph (c) to read as follows:

§ 403.120 How do you request testimony?

* * * * *

(c) You must send your application for testimony to: Office of the General Counsel, Office of General Law, Social Security Administration, Attn: Touhy Officer, 6401 Security Boulevard, Baltimore, MD, 21235. If you are requesting testimony of an employee of the Office of the Inspector General, send your application to the address in § 403.125.

* * * * *

■ 5. Amend § 403.125 by revising the second sentence and adding a third sentence to read as follows:

§ 403.125 How will we handle requests for records, information, or testimony involving SSA's Office of the Inspector General?

* * * Send your request for records or information pertaining to the Office of the Inspector General or your application for testimony of an employee of the Office of the Inspector General to: Office of the Inspector General, Social Security Administration, 6401 Security Boulevard, Room 3–ME–1, Baltimore, MD 21235. Requests may also be sent via email to *SSA.OIG.Touhy.Requests@ssa.gov.*

PART 422—ORGANIZATION AND PROCEDURES

■ 6. The authority citation for part 422 continues to read as follows:

Authority: Secs. 205, 218, 221, and 701–704 of the Social Security Act (42 U.S.C. 405, 418, 421, and 901–904).

■ 7. Amend § 422.848 by revising the third sentence of paragraph (b)(4) to read as follows:

§ 422.848 Suspension and termination of collection activities.

* * * * *

(4) * * * When appropriate, the Office of the General Counsel will take the necessary legal steps to ensure that no funds or money are paid by the agency to the debtor until relief from the automatic stay is obtained.

* * * * *

PART 423—SERVICE OF PROCESS

■ 8. The authority citation for part 423 continues to read as follows:

Authority: Sec. 701 and 702(a)(5) of the Social Security Act (42 U.S.C. 901 and 902(a)(5)).

■ 9. Revise § 423.1 to read as follows:

§ 423.1 Suits against the Social Security Administration and its employees in their official capacities.

(a) *Suits involving individual claims arising under title II, VIII, XVI, or XVIII*

of the Social Security Act. (1) In cases seeking judicial review of final decisions of the Commissioner of Social Security on individual claims for benefits under title II, VIII, or XVI of the Social Security Act, or on individual claims for a Medicare Part D subsidy under title XVIII of the Act, summonses and complaints to be served by mail on the Social Security Administration or the Commissioner of Social Security should be sent to the Office of the General Counsel, Office of Program Litigation, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

(2) We also accept electronic service in these cases, as provided by the Federal Rules of Civil Procedure.

(b) *Other suits.* In cases that do not involve claims described in paragraph (a) of this section, summonses and complaints to be served by mail on the Social Security Administration or the Commissioner of Social Security should be sent to the Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

■ 10. Revise § 423.3 to read as follows:

§ 423.3 Other process directed to the Social Security Administration or the Commissioner.

Subpoenas and other process (other than summonses and complaints) that are required to be served on the Social Security Administration or the Commissioner of Social Security in the Commissioner's official capacity should be served as follows:

(a) If authorized by law to be served by mail, any mailed process should be sent to the Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

(b) If served by an individual, the process should be delivered to the Office of the General Counsel, via the agency mail room at Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

■ 11. Revise § 423.7 to read as follows:

§ 423.7 Acknowledgment of mailed process.

The Social Security Administration will not provide a receipt or other acknowledgment of process received, except for a return receipt associated with certified mail and where otherwise required by law.

PART 429—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES

■ 12. The authority citation for part 429 is revised to read as follows:

Authority: 42 U.S.C. 902(a)(5); 28 U.S.C. 2672; 31 U.S.C. 3721; 28 CFR 14.11.

■ 13. Amend § 429.102 by revising paragraph (c) to read as follows:

§ 429.102 How do I file a claim under this subpart?

* * * * *

(c) *Where to obtain claims forms and file claims.* You can obtain claims forms by writing to the Office of the General Counsel, Office of General Law, Social Security Administration, Attn: FTCA Claims, 6401 Security Boulevard, Baltimore, MD 21235.

■ 14. Amend § 429.107 by revising paragraph (b) to read as follows:

§ 429.107 If my claim is approved, how do I obtain payment?

* * * * *

(b) *Claims in excess of $2,500.* If we approve your claim, we will send the appropriate Financial Management Service forms to the Department of the Treasury, which will mail the payment to you.

■ 15. Amend § 429.201 by revising paragraph (d)(3) to read as follows:

§ 429.201 What is this subpart about?

* * * * *

(d) * * *

(3) ''SSA Claims Officer'' means the SSA official designated to determine claims under the MPCECA. The current designee is the Associate General Counsel for General Law, Office 1.

■ 16. Amend § 429.202 by revising paragraph (b) to read as follows:

§ 429.202 How do I file a claim under this subpart?

* * * * *

(b) *Where to file.* You must file your claim with the Office of the General Counsel, Office of General Law, Social Security Administration, Attn: MPCECA Claims, 6401 Security Boulevard, Baltimore, MD 21235.

* * * * *

[FR Doc. 2023–00081 Filed 1–9–23; 8:45 am]

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Proposed Rules

Federal Register
Vol. 88, No. 6
Tuesday, January 10, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1178]

RIN 1120–AB78

Inmate Financial Responsibility Program: Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update and streamline regulations regarding the Inmate Financial Responsibility Program (IFRP).

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 p.m. on March 13, 2023.

ADDRESSES: Please submit electronic comments through the *regulations.gov* website, or mail written comments to the Legislative & Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons, at the address above or at (202) 353–4885.

SUPPLEMENTARY INFORMATION: Regulations for the Inmate Financial Responsibility Program (IFRP) are located in 28 CFR part 545. This proposed rule amends paragraphs (b), (c), and (d) in 28 CFR 545.11.

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov*. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted *www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

I. Background

The purpose of the Inmate Financial Responsibility Program (Program or IFRP), operated by the Bureau of Prisons (Bureau) since 1987, is twofold: to encourage federal inmates in Bureau facilities to pay financial obligations; and to support federal inmates in developing financial planning skills.

Inmate participation in the IFRP is voluntary. Subject to certain exemptions listed in 28 CFR 545.10, all sentenced federal inmates are eligible to participate. During an inmate's initial classification, current Bureau policy requires staff to review the inmate's financial obligations—by consulting the inmate's presentence investigation report, judgment and commitment order(s) and other court documents, and any other available information—and encourage inmates to satisfy any court-ordered obligations either at the time of this initial review or throughout the inmate's term of imprisonment. The Bureau strongly recommends that all inmates with financial obligations participate in the IFRP, along with other programs and activities designed to reduce recidivism, such as work, education, and drug rehabilitation programs. Additionally, in recognition of the importance of planning for re-entry, including the availability of financial resources, the Bureau is separately exploring methods to encourage inmates to set aside and/or maintain a limited amount of funds specifically for re-entry assistance, which would be encumbered until re-entry and treated differently for purposes of the IFRP. These efforts include implementing section 605(c) of the First Step Act of 2018 (Pub. L. 115–391), which amended 18 U.S.C. 4126(c)(4) to indicate that inmates who work for Federal Prison Industries (FPI, operating under the trade name UNICOR) [1] will have 15 percent of their compensation reserved and made available to assist them with costs associated with release from prison.

If an inmate chooses to participate in the IFRP, Bureau staff will work with the inmate to develop a financial plan, which is documented and signed by the inmate and includes financial obligations paid in the following order of priority:

1. Special assessments imposed by the court under 18 U.S.C. 3013;
2. Court-ordered restitution, including assessments related to bodily injury to victims occurring as a result of the offense, loss or destruction of victim property, or other assessments as indicated by the court;
3. Fines and court costs;
4. State or local court obligations (such as child support or alimony, as documented by a court order or letter from the relevant state authority);
5. Other federal government obligations (including fees imposed under 18 U.S.C. 4001 for Cost of Incarceration, other judgments in favor of the United States, student loans, Veterans Administration claims, tax liabilities, and Freedom of Information or Privacy Act fees).

Given the importance of satisfying outstanding financial obligations and reducing the amount of debt upon release, there are consequences to choosing not to participate. Documented refusal by inmates to participate in the IFRP, or to comply with the provisions of their agreed-upon financial plan, results in the specific consequences currently listed in 28 CFR 545.11(d),

[1] ''UNICOR'' is the trade name for Federal Prison Industries (FPI), which ''sells market-priced services and quality goods made by inmates.'' *See https://www.bop.gov/inmates/custody_and_care/unicor.jsp.*

including notification to the Parole Commission, preclusion of furlough eligibility (other than emergency or medical furlough), preclusion of certain pay benefits or increases, preclusion of eligibility for premium work opportunities and/or removal from a UNICOR work assignment, commissary spending restrictions, loss of release gratuity (unless approved by the warden), and loss of incentives (such as early release and financial awards) otherwise available to an inmate who participates in residential drug treatment programs.

As the IFRP is currently operated, Bureau staff review and reassess each inmate's financial plan and IFRP payments every 180 days; this interval becomes 90 days when the inmate is within 12 months of release. As part of that review, Bureau staff first review the total funds deposited into the inmate's commissary account over the previous six-month period from any source. As stated in 28 CFR 506.1, individual inmate commissary accounts allow the Bureau to maintain inmate monies while the inmate is incarcerated. Funds in inmate accounts can come from a number of sources: the inmate may earn pay from work assignments (including compensation earned through UNICOR); family members or friends may send funds to the inmate; the inmate may receive tax refunds or other government-related issuances; or the inmate may receive other types of income (such as stock dividends, state benefits, litigation settlements, and inheritance). All money earned by the inmate from the Bureau is automatically deposited into the inmate's commissary account.

Next, to determine whether future payments under the IFRP plan should be adjusted based on the inmate's financial activity over the previous six-month period under review, staff subtract the total amount of any payments an inmate has made during the previous six-month period under the IFRP plan (payments made toward the inmate's financial obligations) from the amount deposited into the account over that same time period. Under current regulations in section 545.11(b), when performing this calculation to determine the amount an inmate has available for payment of financial obligations, staff must also subtract a $75 per month allowance for telephone communication (a total of $450 for each six-month period). That amount is not included in the calculation of the total amount an inmate has available for payments under the IFRP.

Then, based on the foregoing information, staff estimate the amount the inmate is likely to have remaining at the end of that six-month period. Based on that amount, staff determine whether to adjust the inmate's financial plan and IFRP payments. Under the current regulation, the minimum payment for inmates who do not have a UNICOR work assignment, or who have a UNICOR grade 5 work assignment, is ordinarily $25 per quarter. For inmates assigned a UNICOR work assignment with a grade between 1 and 4, the minimum payment is ordinarily expected to be 50 percent of the inmate's pay.

Proposed Rule

The Bureau last engaged in rulemaking relating to the IFRP in 1994. This proposed rule makes changes to update, streamline, and clarify IFRP regulations in paragraphs (b), (c), and (d) in section 545.11, as follows:

Proposed changes to paragraph (b):

1. *Introductory paragraph.* The Bureau first proposes to delete and streamline language in the introductory paragraph of 545.11(b) that was intended as guidance for Bureau staff. Currently, paragraph (b) states that, as described above, when computing the amount of funds an inmate has available to pay financial obligations, Bureau staff must: (1) subtract the inmate's minimum payment schedule as determined by the financial plan made during initial classification; and (2) subtract $75 per month to allow the inmate to retain funds for telephonic communication. The amount left after these subtractions, and a review of any deposits that have occurred in the interim between reviews, is considered when determining whether the inmate's IFRP payments should be adjusted.

The purpose of the provision requiring $75 to be subtracted from the amount considered potentially available to pay an inmate's financial obligations was to ensure that inmates could maintain telephonic communication with their families. When that provision was first put in place, there were no other safeguards designed to ensure that inmates had sufficient access to telephone calls to maintain contact with family members. There was, therefore, a concern that all funds deposited into inmate accounts would be used to pay financial obligations, leaving inmates with no funds to pay for telephone calls. However, there have been several developments since the initial creation of this provision that have rendered it unnecessary and obsolete.

The provision originates from a 1993 proposed rule limiting telephone calls for inmates who refuse to participate in the IFRP. (*See* 58 FR 39096, July 21, 1993). When the rule was finalized on April 4, 1994 (59 FR 15812), amended language directed that $50 be set aside monthly for each IFRP inmate-participant's use for telephone calls to family, to address commenters' concerns that inmates lacked control over funds sent to them from outside sources (specifically, funds sent from family for the particular purpose of maintaining telephonic contact). *See* 59 FR 15812 at *15818–9. A commenter was concerned that all funds sent in would be automatically applied toward an inmate's financial obligations, thereby leaving nothing in the inmate's account for the inmate to use for telephone calls to family. The amended language directing that $50 be ''held back'' from the amount to be used to satisfy financial obligations, so that it would be ''saved'' in an inmate's account for telephone calls, resolved this issue.

However, as became apparent, reserving an amount in inmate accounts for telephone calls would only become necessary for inmates who had limited funds available. Inmates with adequate funds were able to pay their financial obligations and still have funds available in their accounts for telephone calls without intervention. Therefore, only indigent inmates needed a ''reservation'' provision.

In the 1994 final rule, the Bureau also assured commenters that inmates without funds would have access to the telephone system, referring to amendments to 28 CFR 540.105, Expenses of inmate telephone use. Paragraph (b) of that regulation currently provides that the warden must permit one collect call per month for inmates without funds and has the discretion to increase that number. Paragraph (d) indicates that the government may bear the expense of inmate telephone use under compelling circumstances. The concern that inmates without funds will be blocked from telephone use is remedied by these amendments.

On January 2, 1996, the Bureau increased the reserved amount from $50 to $75 in an interim rule with a request for comments. (*See* 61 FR 90). This amendment was the direct result of the terms of a settlement approved by the district court in a nationwide federal prisoner class action, *Washington* v. *Reno,* Nos. 93–217, 93–290 (E.D. Ky. Nov. 3, 1995). The 1996 interim rule was finalized on December 28, 1999 (64 FR 72798). However, the settlement agreement, according to its terms, expired in 2002, four years after the installation of the Bureau's second nationwide inmate telephone system. Within the first few years of the

implementation of the Bureau's telephone system, inmates were able to acclimate to the need to adjust IFRP payments and funds in their account in a way that allowed them to retain sufficient funds to use for telephone calls and other needs while incarcerated. Retaining sufficient funds to cover basic inmate needs during incarceration remains a priority when developing and updating an inmate's IFRP payment plan.

One purpose of the IFRP is to promote inmate financial understanding and self-regulation. To meet that goal, staff work with inmates to structure a reasonable payment plan that is attainable for the inmate, in light of any funds coming into the account (whether from inmate work assignment pay or through outside sources) and any reasonable expenditures required by the inmate. Therefore, because of the safeguards that currently exist in 28 CFR part 540 to allow inmates without funds access to telephone calls to maintain family contact, the proposed amendments would delete provisions in 28 CFR part 545 requiring that inmate funds be specifically reserved for this purpose.

2. *Addition of language regarding implementation of payment plans contained in court orders.*

The Bureau proposes to include language in the regulation that clarifies how the Bureau will treat payment plans for financial obligations that are set out in an inmate's Judgment & Commitment order (J&C) or other court order. Current guidance for Bureau staff provides that if the inmate's J&C has a specific payment plan outlined, payments are to be collected according to the direction provided in the J&C. The Bureau proposes to make this provision part of the rule itself, in order to minimize confusion for inmates and staff and make clear that such court-ordered payment plans, rather than plans developed under the IFRP rule, will be implemented as the inmate's financial pan.

Since the Bureau last engaged in rulemaking on this topic, a significant body of case law has developed around restitution imposed under the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. 3663A and 3664. The MVRA directs that a sentencing court ''shall . . . specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid.'' 18 U.S.C. 3664(f)(2). The federal courts of appeals have uniformly held that payment plans for MVRA obligations are the province of the district courts, and expressly prohibit delegation of that authority to another entity. *See, e.g., United States* v. *Gunning,* 339 F.3d 948 (9th Cir. 2003); *United States* v. *Prouty,* 303 F.3d 1249, 1254–1255 (11th Cir. 2002). In accordance with this case law, and in the interest of establishing a uniform standard for all financial obligations across all Bureau facilities and respecting the orders of federal courts, the Bureau proposes to make explicit in the IFRP rule that a court-ordered payment plan should be implemented as an inmate's financial plan.

3. *Addition of language regarding one-time payment.* The Bureau proposes to add language to the rule that clarifies that, following the initial classification and review of the inmate's financial obligations, the inmate should be encouraged to make a one-time payment from available funds in the inmate's commissary account to satisfy any identified financial obligations. Currently, guidance to Bureau staff notes that in certain circumstances, including when an inmate's total financial obligation is $100 or less, the inmate should be encouraged to make a one-time payment to satisfy that obligation. The purpose of this revision is to make clear that all inmates, regardless of the size of the financial obligation, should be encouraged to make this one-time payment. In addition, the Bureau proposes to include language noting that if the inmate has funds in the inmate's commissary account sufficient to satisfy a fine or restitution, but refuses to make a single payment to do so during this initial review, the United States Attorney's Office in the inmate's district of prosecution should be notified. The intent of this provision is to allow the United States Attorney's Office to proceed with any judicial process necessary to have those funds turned over in satisfaction of the inmate's fine or restitution obligation.

4. *Revision of language regarding development of payment plans.* The Bureau also proposes to modify language indicating that the minimum payment for inmates who do not work in UNICOR positions and those who work in UNICOR positions at the grade 5 level will be $25 per quarter, and that inmates assigned to UNICOR grades 1 through 4 work assignments will be expected to allot 50% of their monthly pay to IFRP payments. The regulation categorizes inmates as such because, as described in 28 CFR 345.51, inmate workers in UNICOR receive pay at five levels, ranging from grade 5 pay (lowest currently $.23/hour) to grade 1 pay (highest currently $1.15/hour). Generally, non-UNICOR assignments are less desirable to inmates because the pay is lower, ranging from $.12/hour to $.40/hour depending on grade.

In recognition of the differences in pay, the IFRP regulations have traditionally allowed for a lower overall minimum payment for inmates in non-UNICOR assignments and those at the lowest UNICOR pay level (grade 5). UNICOR pay rates have consistently been three to four times that of non-UNICOR pay rates. However, instead of a percentage requirement, as exists for inmates who have UNICOR work assignments and are paid at the higher UNICOR pay levels, the current regulation indicates that the minimum payment of financial obligations for these non-UNICOR and UNICOR grade 5 inmates will ordinarily be $25 per quarter, but may exceed $25 when factors such as the inmate's specific obligations, institution resources, and community resources are taken into consideration.

Because of the use of the word ''may,'' the current regulation proved to be unclear regarding whether and how community resources (such as funds from friends and family) should be taken into consideration. The language described above was meant not to be permissive but instead to indicate that community resources must be taken into account when calculating IFRP payments for these inmates. In practice, inmates and staff read the regulation as indicating that the default position was that these inmates could maintain minimum payments of $25 per quarter. Therefore, many inmates employed in non-UNICOR assignments or a UNICOR grade 5 assignment maintained a minimum payment of $25 per quarter of their obligations, and community resources were not taken into account. As a result, many inmates currently pay only $25 per quarter toward their financial obligations, despite having the financial means to increase those payments.

The Bureau therefore proposes to change the regulation as follows:

- The regulation would indicate that, in the absence of some other court-ordered payment plan, inmates assigned to UNICOR work assignments in grades 1 through 4 will be expected to allot not less than 50% of their pay to IFRP payments, and that those assigned to UNICOR grade 5 or non-UNICOR work assignments will be expected to allot not less than 25% of their pay to IFRP payments.
- The regulation would also clarify that all inmates, in the absence of some other court-ordered payment plan, whether assigned to UNICOR or non-UNICOR work assignments, will be expected to allot not less than 75% of

funds from non-institution (community) resources to the IFRP payment process.

• Further, the regulation would explain that exceptions to the stated allotments must be approved by the inmate's unit manager in consultation with the associate warden of the inmate's institution, and documented in writing.

This change is consistent with the intent of the Bureau when the regulations were first published as a proposed rule on November 21, 1986 (51 FR 42167) and finalized on April 1, 1987 (52 FR 10528). The 1987 version of current 28 CFR 545.11(b) indicated that payments required by an inmate's financial responsibility plan were to be made from both the ''earnings of the inmate within the institution and/or from outside resources.''

When the regulations were amended in 1989, language was added to the regulation specifying that the minimum payment for non-UNICOR and UNICOR grade 5 inmates would be $25 per quarter. (*See* proposed rule published on March 17, 1989, at 54 FR 11332; and final rule published on December 1, 1989, at 54 FR 49944.) The regulations were again amended on May 21, 1991 (56 FR 23476), and were clarified to explain that the minimum payment may exceed $25, taking into consideration the inmate's specific obligations, institution resources, and community resources.

However, since 1991, it has proved impractical to have a specified dollar amount ($25) required in the regulation for the purpose of fulfilling inmate financial obligations. As stated, the initial 1989 regulations attempted to specify a $25 minimum payment but, when it proved untenable, the regulations were amended in 1989 to allow for a ''minimum payment'' exceeding the specified amount, indicating that the individual circumstances of each inmate—namely, ''factors such as the inmate's specific obligations, institution resources, and community resources''—must be taken into consideration.

Therefore, the Bureau now proposes to clarify this provision by removing the specified dollar amount altogether, and replacing it with a percentage system, which will more equitably account for each inmate's specific obligations and resources while leaving the inmate with some funds to spend within the institution and/or save for re-entry purposes. As indicated above, pay rates for UNICOR work assignments are between three and four times higher than pay rates for non-UNICOR work assignments. To adjust for this disparity in pay rates, the Bureau proposes to require inmates with UNICOR work assignments to allot 50% of pay to IFRP payments, and those with non-UNICOR work assignments to allot 25% of pay to IFRP payments. In addition, in recognition of the importance of satisfying financial obligations, including restitution owed to victims of criminal conduct, inmates will also be expected to allot 75% of the deposits received into their commissary accounts from sources outside the institution to the IFRP payment process. As indicated, however, these percentage allotments may be altered on a case-by-case basis, as approved by the unit manager in consultation with the associate warden of the inmate's institution.

In developing this proposed rule, the Bureau explored the possibility of creating a system wherein the percentage of institution (community) deposits an inmate would pay toward IFRP increased as the inmate's commissary account balance or total amount of deposits increased. The Bureau also considered a system similar to progressive taxation, which would apply a lower marginal rate to amounts below a certain threshold, and higher marginal rate to amounts above that threshold. These proposals offer several benefits. It would allow the Bureau to target large account balances while still preserving a minimum amount of funds for an inmate's daily and future use. It is also more equitable, recognizing that an inmate with an account balance of $100 and minimal incoming deposits is differently situated than one with an account balance of $10,000 or one with numerous deposits.

However, the Bureau also determined that there were significant technological, administrative, and other disadvantages associated with these alternative approaches when compared to applying a single, flat percentage to all deposits. First, there is the risk that inmates might maintain deliberately small account balances through unlawful or illegitimate means (including having money held by other inmates), or otherwise engage in ''structuring'' of deposits and other transactions, to avoid paying a higher percentage toward IFRP. In addition, a system that set cut points based on the balance in an inmate's account presented the risk of unfairness by treating inmates with similar balances differently. For example, an inmate whose account balances totaled $499 might be expected to pay 25 percent of future deposits towards IFRP, while an inmate whose account balances totaled $500.01 might be expected to pay 50 percent of community deposits towards IFRP.

A ''progressive'' system tied to deposit amounts could mitigate this latter concern. For instance, such a system might set a marginal rate of 25% for the first $500 in community deposits during a time period, with a rate of 75% for any deposits over $500 during the same span. In that scenario, an inmate who deposited $500 in a 365-day period would pay $125 (25% of the $500). An inmate who deposited $501 in a 365-day period would pay $125.50 (25% of the first $500, and 75% of the amount—$1—over $500).

This solution, however, brings technological and administrative challenges for the Bureau. The Bureau lacks a fully automated process to ''freeze'' funds or make IFRP withdrawals from an inmate's account, which prevents the Bureau from automatically adjusting IFRP payments as the amount in the account increases or decreases, or an individual deposit is above or below a certain point. An individual inmate's IFRP financial plan is first manually entered by unit team staff and payments are manually withdrawn and paid to the correct payee by a Trust Fund staff member pursuant to the terms of the financial plan the inmate has agreed to. In developing the financial plan, unit team staff look at the prior 180 days of financial activity in the inmate's account to determine how much the inmate will be expected to pay; the inmate then signs the financial plan and agrees to abide by that plan until the next review. Because deposits can fluctuate significantly from one six-month period to the next (for example, if an inmate receives a tax refund or other one-time payment), basing an inmate's future payment obligations on past deposits is administratively difficult.

As a result of the concerns addressed above, the Bureau ultimately concluded in this proposed rule that it would treat all community deposits equally for IFRP purposes. Under this proposed rule, inmates will know with certainty what they will be expected to pay. Staff will be able to develop intelligible financial plans that are easily understood by inmates and appropriately implemented by BOP staff members. At the same time, the Bureau understands the concerns with this system and will consider input in finalizing the rule as to this proposed structure, as well as suggestions for how to make a ''progressive'' system more practicable notwithstanding the challenges described above.

Proposed changes to paragraph (c):

Paragraph (c) of 28 CFR 545.11 explains that an inmate's participation and progress in meeting the inmate's

IFRP obligations will be assessed each time staff assess the inmate's demonstrated level of responsible behavior. What this has meant in practice is that an inmate's IFRP participation and financial plan are reviewed during the inmate's program review meeting with unit team staff, which ordinarily occurs every 180 days. *See* 28 CFR 524.11(a)(2).

The Bureau intends to revise this rule to explain that the inmate's financial plan will be reviewed at a minimum during the inmate's program review meeting. This revision would make explicit what has been Bureau practice and would align this regulatory text with the terminology used in 28 CFR 524.11. Furthermore, by specifying that this review would take place ''at a minimum'' during program review, the Bureau intends to provide staff with flexibility to adjust an inmate's financial plan during the interim period between program review meetings in the event the inmate's circumstances change (for example, a change in institution work assignment).

Proposed changes to paragraph (d):

Paragraph (d) of 28 CFR 545.11 lists the effects of non-participation in the IFRP. The Bureau is proposing to revise paragraph (d) to remove some listed consequences, as they are no longer in use, and to add one new consequence. The Bureau proposes to make three substantive changes.

1. *Deletion of language requiring quartering in lowest housing status as an effect of non-participation in IFRP.* First, the Bureau proposes to delete current paragraph (d)(7), which requires that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate be quartered in the lowest housing status available (dormitory or double-bunking, for example). Based on the physical layout of many institutions, as well as the mission of each facility, implementing this ''effect of non-participation'' is not always feasible. Assignments to housing are based on a variety of factors, including administrative, staffing, population, building layout, environmental, and other factors; therefore, implementing this provision has proved impractical at various facilities, over time, and even within the same facility among different units.

2. *Deletion of language prohibiting placement in community-based programs as an effect of non-participation in IFRP.* Second, the Bureau proposes to delete current paragraph (d)(8), which states that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate will not be placed in a community-based program. An inmate's refusal to participate in the IFRP should not be the sole determining factor in an inmate's eligibility for placement in a community-based program, though it will continue to be a factor when considering an inmate's level of responsibility. In fact, the Bureau reviews all inmates for placement in community-based programs in accordance with the Second Chance Act of 2007, Public Law 110–199, 122 Stat. 657, April 9, 2008 (*see also* the Second Chance Reauthorization Act of 2018, Pub. L. 115–391, 132 Stat. 5194, December 21, 2018).

3. *Addition of language regarding inmate ineligibility to earn or apply First Step Act Time Credits as an effect of non-participation in IFRP.* Pursuant to the First Step Act (FSA) of 2018 (Pub. L. 115–391, codified in pertinent part at 18 U.S.C. 3632), the Bureau is required to assess the recidivism risk and criminogenic needs of all federal inmates, and to place inmates in recidivism reducing programs and productive activities to address their needs and reduce this risk. The FSA and its implementing regulations (28 CFR 523.40 through 523.44) provide that eligible inmates can earn FSA Time Credits, which shall be applied toward prerelease custody or early transfer to supervised release, for successfully participating in approved Evidence-Based Recidivism Reduction (EBRR) Programs or Productive Activities (PAs). EBRRs and PAs are assigned to each inmate based on the inmate's risk and needs assessment. 18 U.S.C. 3632(d)(4) and 3624(g); 28 CFR 523.40–44.

Productive Activities are ''group or individual activit[ies] that allow[ ] an inmate to remain productive and thereby maintain or work toward achieving a minimum or low risk of recidivating.'' 28 CFR 523.41(b). PAs include a variety of groups, programs, classes, and individual activities which can be either structured (*i.e.,* a curriculum-based program led by staff, contractors, or volunteers) or unstructured (*e.g.,* maintaining family connections, fitness, and clear institutional conduct; obtaining identification). Inmates who ''opt out'' of recommended EBRR Programs or PAs are ineligible to earn or apply FSA Time Credits. 28 CFR 523.41(c)(4)(v)(iii) and (d); 523.44(a) (inmate must be eligible to earn FSA Time Credits in order to apply FSA Time Credits).

The Bureau considers the IFRP to be an unstructured Productive Activity, and it therefore proposes to add a paragraph, (d)(9), to this rule, to clarify that inmates who refuse to participate in (opt out of) the IFRP will not be eligible to earn or apply FSA Time Credits. During an inmate's initial classification, Bureau policy requires staff to review the inmate's financial obligations. The Bureau recommends that all inmates with financial obligations participate in the IFRP as a means of addressing this need, as an inmate's efforts to fulfill their financial obligations through IFRP demonstrate acceptance of responsibility and a good faith effort to lower their recidivism risk. Because an inmate with financial obligations who ''opts out'' of IFRP participation will fail to successfully participate in a recommended Productive Activity, such an inmate will remain ineligible to earn or apply FSA Time Credits until such time as the inmate chooses to participate in the IFRP. *See* 28 CFR 523.41(c)(4)(v)(iii) and 523.44.

4. *Conforming amendments.* Finally, the Bureau proposes to delete current paragraph (d)(10), which is currently listed as ''reserved,'' and to make amendments to redesignate the numbered list in this regulation to conform to the changes described in this proposed rule.

Regulatory Analyses

Executive Orders 12866 and 13563. This proposed rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to an existing BOP program that applies to sentenced inmates in the custody of the Federal Bureau of Prisons, and does not apply to inmates in study/observation; pretrial detainees; or inmates in holdover status pending designation.

Executive Order 13132. This proposed rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, the Bureau determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This proposed rule pertains to the correctional management of offenders

committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds and funds held in individual inmate accounts.

Unfunded Mandates Reform Act of 1995. This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act. This proposed rule is a not major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 545

Prisoners.

Colette S. Peters,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, the Bureau proposes to amend 28 CFR part 545 as follows:

Subchapter C—Institutional Management

PART 545—WORK AND COMPENSATION

■ 1. The authority citation for part 545 is amended to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3632, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 545.11, revise paragraphs (b), (c), (d) introductory text, and (d)(7) through (9) to read as follows:

§ 545.11 Procedures.

* * * * *

(b) *Payment of financial obligations.* The inmate is responsible for making satisfactory progress in meeting the inmate's financial responsibility plan and for providing documentation of these payments to unit team staff. A plan for payment of financial obligations set out in the inmate's Judgment & Commitment order (J&C) or other court order should be implemented as the inmate's financial plan. In the event the J&C or other court order does not prescribe a payment plan or schedule, the following will apply.

(1) *Initial classification.* During the initial classification and review of the inmate's financial obligations, unit team staff will review the inmate's individual commissary account balance and encourage the inmate to make a one-time single payment to satisfy any financial obligations. If the inmate has funds sufficient to satisfy a fine or restitution, but refuses to make a single payment to do so, the United States Attorney's Office in the inmate's district of prosecution should be notified.

(2) *Financial plans.* For an inmate who is unwilling or unable to make a single payment to satisfy the inmate's financial obligation(s) at the time of the initial classification and review, Bureau staff will establish a financial plan for the inmate. These financial plans shall be structured as follows:

(i) *Allotment of institution resources.* (A) An inmate with a UNICOR work assignment in grades 1 through 4 will be expected to allot not less than 50% of the inmate's monthly pay to the IFRP payment process.

(B) An inmate with a non-UNICOR work assignment or UNICOR grade 5 work assignment will be expected to allot not less than 25% of the inmate's monthly pay to the IFRP payment process.

(ii) *Allotment of non-institution (community) resources.* An inmate will be expected to allot 75% of deposits placed in the inmate's commissary account by non-institution (community) sources to the IFRP payment process.

(3) *Exceptions to allotment amounts.* Any allotment which differs from those described in paragraph (b)(2) of this section must be approved by the unit manager, after consultation with the associate warden, and documented in writing.

(c) *Monitoring.* Participation and/or progress in the IFRP will be reviewed, at a minimum, during an inmate's program review meeting.

(d) *Effects of non-participation.* Refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of the inmate's financial plan shall result in the following:

* * * * *

(7) The inmate will not receive a release gratuity unless approved by the warden;

(8) The inmate will not receive an incentive for participation in residential drug treatment programs; and

(9) The inmate will not be eligible to earn or apply First Step Act Time Credits, as described in 18 U.S.C. 3624 and 3632(d)(4), and 28 CFR 523.40–523.44.

* * * * *

[FR Doc. 2023–00244 Filed 1–9–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

[FISCAL–2022–0003]

RIN 1530–AA27

Management of Federal Agency Disbursements

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury's (Treasury) Bureau of the Fiscal Service (''Fiscal Service'' or ''we''), is proposing to amend its regulation that implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless a waiver is available. Among other things, this Notice of Proposed Rulemaking (NPRM) would strengthen the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service's approval to invoke certain existing waivers; provide that Treasury has the right to nullify an agency's use of a waiver if Treasury determines that application of a waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT; and clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury has authority to assess a charge to an agency. The proposed changes reflect the reality that the use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998 and also seek to take advantage of Treasury's growing profile of electronic payment options, which are faster, less expensive, and safer than paper checks. Strengthening the EFT requirements as proposed in the NPRM is also consistent with Treasury's commitment to reducing check payments.

DATES: To be considered, comments on the proposed rule must be received by March 13, 2023.

ADDRESSES: Commenters are encouraged to submit comments on the proposed rule, identified by Docket No. FISCAL–

2022–0003, electronically through the Federal eRulemaking Portal at *regulations.gov* by following the online instructions for submitting comments. Comments on the proposed rule may also be mailed to the Department of the Treasury, Bureau of the Fiscal Service, Attn: Matthew Helfrich, Management and Program Analyst, Payment Strategy and Innovation Division, 3201 Pennsy Drive, Bldg. E, Landover, MD 20785. Comments on the proposed rule may also be mailed to the Department of the Treasury, Bureau of the Fiscal Service, Attn: Matthew Helfrich, Management and Program Analyst, Payment Strategy and Innovation Division, 3201 Pennsy Drive, Bldg. E, Landover, MD 20785.

All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number for this rulemaking (FISCAL–2022–0003). In general, comments received will be published on *Regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You can download the proposed rule at the following website: *fiscal.treasury.gov/eft/laws-regulations.html*. You may also inspect and copy the proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Matthew Helfrich, Management and Program Analyst, at (215) 806–9616 or *Matthew.Helfrich@fiscal.treasury.gov*, or Rebecca Saltiel, Senior Counsel, at (202) 874–6648 or *Rebecca.Saltiel@fiscal.treasury.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Fiscal Service issued a final rule on part 208 of title 31, Code of Federal Regulations (part 208), to implement the requirements of section 3332 of title 31 of the United States Code, as amended by section 31001(x)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–376 (section 3332). Section 3332 generally mandates that all Federal payments that the Government makes, other than tax payments, be delivered by EFT unless waived by the Secretary of the Treasury.

The waivers authorized by section 3332 are located exclusively in part 208. Specifically, subsection (f)(2)(A) of section 3332 provides that ''[t]he Secretary of the Treasury may waive application of [the EFT mandate] to payments—(i) for individuals or classes of individuals for whom compliance poses a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary.'' 31 U.S.C. 3332(f)(2)(A). Subsection (f)(2)(B) states that ''[t]he Secretary of the Treasury shall make determinations under subparagraph (A) based on standards developed by the Secretary.'' 31 U.S.C. 3332(f)(2)(B). 31 U.S.C. 3332 also, more generally, authorizes the Secretary of the Treasury to ''prescribe regulations that the Secretary considers necessary to carry out this section.'' 31 U.S.C. 3332(i)(1).

Pursuant to statutory authority in 31 U.S.C. 3335, part 208 also provides that Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208.

The part 208 waivers have remained largely unchanged since the late 1990s even as Treasury's percentage of payments made electronically has significantly increased. In 2007, 78% of the Government's payments that Treasury disbursed were made electronically. By 2021, that figure had risen to over 96%. Of the 1.4 billion payments that Treasury typically disburses each year on behalf of Federal agencies, all but about 50 million are paid electronically.

The part 208 waivers have also remained largely unchanged despite Treasury expanding its electronic payment offerings. The additional offerings include same-day Automated Clearing House (ACH) payments; ACH payments with addenda information; Treasury-sponsored debit cards; commercial prepaid cards; and emerging payments using digital wallets, including the Treasury-sponsored Digital Pay program. Treasury also operates electronic payment support and education programs and platforms such as *GoDirect.gov* and the Direct Express Financial Education Center. None of these offerings existed when Treasury published its final rule on part 208 in 1998, including its waiver provisions.

The use of Treasury-sponsored debit cards illustrates how much has changed since the waivers were first published. Over 3.6 million Federal benefit payees receive their payments on Direct Express debit cards, which are linked to accounts sponsored by Treasury. Similarly, over 16.5 million Economic Impact Payment (EIP) payees received payments in 2020 and 2021 on EIP Cards, which are debit cards linked to Treasury-sponsored accounts. The Direct Express program helps ensure that recipients of Federal benefits receive payments electronically even if they do not have bank accounts. The use of EIP Cards helped Treasury meet its responsibility to issue EIPs as quickly as possible. But for the issuance of debit cards, most of these payments would have been by paper check.

It is Treasury's goal to create a modern, seamless, and cost-effective Federal payment experience for the public. Expanding the use of electronic payments and reducing the number of paper checks are essential to this goal. Electronic payments are much faster and significantly less expensive than paper checks. Electronic payments are safer than paper checks as well, with direct deposits being 16 times less likely to have post-payment issues (such as claims of missing or misdelivered payments) than paper checks. Electronic payments avoid the disproportionate burden checks can place on some payment recipients—who may have to resort to expensive check cashing services—as well as the negative impact that check production and delivery may have on the environment.

There remains room for improvement in increasing the percentage of payments made electronically and reducing the number of paper checks produced and mailed out every year. Treasury works closely with Federal agencies that make payments and has encountered numerous examples of payments that are made by paper check that ought to be made electronically. These often include Federal intragovernmental payments and vendor payments, many of which take place on a recurring basis. Increasing the electronic payment rate for Treasury-disbursed payments is part of an Agency Priority Goal for Treasury, and Treasury has set an objective that by the end of the decade 99% of all Government payments it disburses for agencies will be paid electronically.

Treasury believes that it is time to narrow the existing waivers. A narrowing of the waivers should increase the percentage of payments made electronically and reduce the number of paper checks sent out each year. This narrowing is possible and appropriate because of the changes over the last 20 years that have increased the percentage of electronic payments and the number of electronic payment options.

II. Proposed Change to Regulation

Summary of Proposal

The proposed rule affects the EFT waivers in § 208.4 that have been largely unchanged since the late 1990s. We propose amending several existing waivers to either narrow their scope or to require the agency seeking to use the waiver to first file a request with Treasury. The rule changes are consistent with, and facilitated by, a substantial increase in the percentage of electronic payments and in the number of electronic payment options since many of these waivers were first published.

We also propose to add a new paragraph (c) to § 208.4 that would give Treasury the ability to nullify an agency waiver if Treasury makes the determination that the application of the waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT.

In addition, we propose amending § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury will consider that payment to not be a timely payment under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than paper checks. We would retain the existing language in § 208.9(b) authorizing Treasury to assess a charge to an agency that fails to make a payment by EFT as prescribed under this part.

Treasury is requesting comment on all proposed amendments to this part including views on whether the amendments are appropriate and well-tailored to increase the delivery of secure and accurate electronic payments at reduced operational costs while also improving climate sustainability and expanding financial inclusion.

III. Section-by-Section Analysis

§ 208.1

We are not proposing any changes to § 208.1.

§ 208.2

We are not proposing any changes to § 208.2.

§ 208.3

We are not proposing any changes to § 208.3.

§ 208.4

We propose to amend § 208.4 in several ways.

We propose to amend the waiver at paragraph (a)(1)(ii), which exists for payment types for which Treasury does not offer delivery to a Treasury-sponsored account. The amendment would specify that if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury before making payments other than by EFT. The waiver request process ensures that Treasury, not the agency, will determine whether Treasury can offer payment delivery to a Treasury-sponsored account. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will cease for payments to be made after the decision date.

We propose to add a new waiver to § 208.4 that would be numbered as a new paragraph (a)(3). This waiver would provide that payment by EFT is not required when the payment is to be made in a foreign currency and Treasury does not support electronic payment in that foreign currency. Treasury currently supports electronic payments in 145 foreign currencies to over 200 countries and territories, but we acknowledge that Treasury payment systems do not support electronic payment in every foreign currency. The proposed new waiver would apply in these limited circumstances.

We propose to amend the existing waiver at paragraph (a)(3) (proposed to be renumbered as paragraph (a)(4)), which waives the EFT requirement for payments to recipients in a designated disaster area within 120 days after the disaster is declared. The amendment would allow an agency to extend this waiver beyond 120 days after the disaster is declared, provided that the agency files a waiver request with Treasury using a procedure set forth in paragraph (b). Filing is sufficient to extend the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request the waiver will cease for payments to be made after the decision date. We propose this change in response to feedback we have received from an agency regarding their disaster relief payments and the potential need to extend the waiver beyond the initial 120-day timeframe. However, agencies contemplating using this waiver should be mindful that U.S. Debit Cards and Direct Express cards are electronic payment options that Treasury can make available to recipients in designated disaster areas, negating the need for an EFT waiver and paper checks in many instances.

We propose to amend the waiver at paragraph (a)(6) (but would now be renumbered as paragraph (a)(7)), which applies when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by EFT. We plan to eliminate the language concerning the remittance data explaining the purpose of the payment. This language is archaic and no longer necessary or pertinent. Treasury disburses Federal payments to recipients' financial institution accounts with information that the financial institutions make available to recipients, allowing recipients to determine the purpose of the payments. This information often exceeds the information available on a Treasury check.

We also plan to amend the remaining language in the waiver at paragraph (a)(6) (proposed to be renumbered as paragraph (a)(7)) to narrow its scope so that it will only apply when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and that recipient is an individual or a small business concern. We propose to adopt the meaning given to the term ''small business concern'' in section 3 of the Small Business Act at 15 U.S.C. 632. A broad waiver that would apply when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, regardless of the identity of the recipient, is no longer necessary, given the variety of electronic payment options available to agencies and payment recipients, including vendors. Nevertheless, we propose to retain this waiver for agency payments to small business concerns to aid Federal agencies in their efforts to reach the broadest and most inclusive and diverse audience for Federal agency contracting opportunities. We also propose to retain this waiver for agency payments to individuals because we recognize that there are limited situations in which it might still make sense for an agency to make a one-time, non-recurring payment to an individual by paper check.

During Treasury's ongoing interactions with agencies regarding our efforts to increase electronic payments, we have become aware that some agencies are mistakenly relying on the one-time, non-recurring payment waiver (currently at § 208.4(a)(6)) to make the first in a series of recurring benefit payments to a recipient by paper check. Part 208 does not, as currently written, provide agencies with a waiver for the initial payment in a series of recurring payments. We understand that certain

benefit paying agencies have encountered process and systems-related impediments that make it difficult for them to make the initial payment in a series of recurring benefit payments by EFT.

We do not propose adding a permanent waiver for this category of initial, recurring payments, but pursuant to § 208.10 Treasury reserves the right to waive any provisions of part 208 in any class of cases. In response to the feedback we have received from benefit paying agencies regarding systems impediments to making the initial payment in a series of recurring payments by EFT, and using the discretion provided in § 208.10, we will waive application of the EFT mandate for agencies making initial payments in a series of recurring payments for two years from the date of publication of the final rule amending part 208. This will permit affected agencies to make initial payments by paper check while giving agencies the time they need to make any required system or process changes that will allow them to fully comply with the part 208 EFT mandate.

We propose to amend the existing waiver that is at paragraph (a)(7) (proposed to be renumbered as paragraph (a)(8)), which applies to payments where: (1) an agency's need for goods and services is urgent or where there is only one source for goods or services and (2) the Government would be significantly impacted unless payment is made by means other than EFT. We would retain this waiver but require an agency to file a waiver request with Treasury to invoke it. The subject matter of this waiver is extremely fact specific, so we believe that it is appropriate for Treasury to consider waiver requests under the new (a)(8) on a case-by-case basis. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will cease for payments to be made after the decision date.

We propose to amend paragraph (b), which describes the waiver request process. We would amend it so that it extends to requests for waivers from agencies as well as individuals. Agencies do not submit waiver requests today but pursuant to today's proposed rule would do so in some cases as described above. Agencies seeking waivers would be able to find more detailed information about how to file a waiver request from Treasury in the Treasury Financial Manual at *fiscal.treasury.gov/tfm.* Agencies would be entitled to make payment by paper check during the pendency of the waiver request process so that no payments would be delayed by the new waiver request requirement. Individuals seeking waivers can find more detailed information about how to file a waiver request with Treasury at *godirect.gov*. Treasury reserves the right to reject any waiver request it receives.

We propose to add a new paragraph (c) that would give Treasury the ability to nullify an agency's waiver if Treasury makes the determination that the application of the waiver would lead to the agency initiating an unusually large number or proportion of payments by means other than EFT. If Treasury nullified a waiver for a class of cases in accordance with this new paragraph (c), Treasury would require the agency in question to work with Treasury to identify and implement ways to make the payments by EFT. Among other things, this may include requiring an agency to work with Treasury to identify information to make payments by EFT by using data that Treasury maintains on previous payments to the same payment recipient.

The remaining provisions in § 208.4 are unchanged.

§ 208.5

We are not proposing any changes to § 208.5.

§ 208.6

We are not proposing any changes to § 208.6.

§ 208.7

We propose to amend § 208.7 to add a new requirement that an agency shall provide to Treasury, upon request from Treasury, the employer identification numbers (EINs) assigned to the agency that the agency has used when making or receiving Federal intragovernmental payments within the 12 months preceding the request as well as the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment in the preceding 12 months. This agency EIN data would be valuable because it would enable Treasury to identify Federal intragovernmental payments more easily. We propose to add this requirement as a subparagraph (b) and label the existing language in 208.7 as subparagraph (a).

§ 208.8

We are not proposing any changes to § 208.8.

§ 208.9

We propose to amend § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by this part, Treasury will consider the payment to be untimely under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than checks. When an agency makes a paper check payment that falls into one of the waiver categories in § 208.4, Treasury will consider that payment to be a timely payment under 31 U.S.C. 3335 as an exceptional circumstance. We would retain the existing language in § 208.9(b) specifying that, pursuant to 31 U.S.C. 3335, Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208. Treasury would reserve the right to assess a charge to any agency that fails to make a payment by EFT after Treasury has rejected the agency's waiver request for that payment.

§ 208.10

We are not proposing any changes to § 208.10.

§ 208.11

We are not proposing any changes to § 208.11.

IV. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule provisions being amended primarily apply to Federal agencies and individuals who receive Federal payments, and do not have any direct impact on small entities.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before

promulgating any rule likely to result in 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

V. Proposed Regulations

List of Subjects in 31 CFR Part 208

Banks, banking, Debit cards, Disbursements, Electronic funds transfers, Federal payments, Treasury-sponsored accounts.

For the reasons set out in the preamble, we propose to amend 31 CFR part 208 as follows:

Title 31: Money and Finance: Treasury

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503.

* * * * *

■ 2. Amend § 208.4 by:
■ a. Revising paragraph (a)(1)(ii);
■ b. Adding a new paragraph (a)(3) and redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(4) through (a)(8);
■ c. Revising paragraphs (a)(4), (a)(7), and (a)(8);
■ d. Revising paragraph (b); and
■ e. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 208.4 Waivers.

(a) * * *

(ii) * * * However, if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury to make payments of that type by any means other than by electronic funds transfer.

* * * * *

(3) Where the payment is in a foreign currency and Treasury does not support electronic payment in that currency.

(4) * * * An agency must file a waiver request with Treasury (which must be approved by Treasury) to extend this waiver beyond 120 days after the disaster is declared.

* * * * *

(7) Where the agency does not expect to make multiple payments to the same recipient within a one-year period on a regular, recurring basis but only if the payments are made to an individual or a small business concern where ''small business concern'' has the meaning given the term in section 3 of the Small Business Act at 15 U.S.C. 632.

(8) * * * An agency must file a waiver request with Treasury (which must be approved by Treasury) to utilize this waiver.

(b) An individual who requests a waiver under paragraphs (a)(1)(iv) and (v) or an agency who requests a waiver under paragraphs (a)(1)(ii), (a)(4), or (a)(8) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe. Treasury reserves the right to reject any waiver request it receives.

(c) If application of an agency's waiver, together with any waiver request previously granted under paragraphs (a)(1)(ii), (a)(4), or (a)(8), would, in Treasury's determination, lead to the agency initiating an unusually large number or proportion of payments by means other than electronic funds transfer, Treasury reserves the right to nullify the waiver in this class of cases and require the agency to work with Treasury to identify and implement ways to make the payments by electronic funds transfer.

* * * * *

■ 3. Amend § 208.7 by:
■ a. Redesignating the existing language as paragraph (a); and
■ b. Adding a new paragraph (b).

The revision and addition read as follows:

§ 208.7 Agency responsibilities.

(a) An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Treasury-sponsored account.

(b) Upon request from Treasury, an agency shall provide Treasury with a list of the employer identification numbers (EINs) assigned to the agency that the agency has used to make or receive a Federal intragovernmental payment during the 12-month period preceding the request from Treasury as well as a list of the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment during the same 12-month period.

* * * * *

■ 4. Amend § 208.9 by revising paragraph (b) to read as follows:

§ 208.9 Compliance.

* * * * *

(b) If an agency fails to make payment by electronic funds transfer as prescribed under this part, Treasury will consider that payment to be not timely pursuant to 31 U.S.C. 3335, as electronic funds transfer payments are processed, disbursed, and settled more quickly than checks and, accordingly, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

David Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2022–28458 Filed 1–9–23; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 203

[COE–2021–0008]

RIN 0710–AA78

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 15, 2022, the U.S. Army Corps of Engineers (the Corps) published a proposed rule to revise its natural disaster procedures under this part of the Code of Federal Regulations (CFR), which implements a section of the Flood Control Act of 1941, as amended. The comment period was originally scheduled to end on January 17, 2023, and we received requests to extend the comment period. I am extending the comment period by 30 days to provide a 90-day comment period for this proposed rule. Comments previously submitted do not need to be resubmitted, as they have already been incorporated into the administrative

record and will be fully considered in the Corps' decision-making process for this rulemaking action.

DATES: The comment period for the proposed rule published at 87 FR 68386 on November 15, 2022 is extended. Written comments must be submitted on or before February 16, 2023.

ADDRESSES: Submittal of comments may be accomplished, identified by docket number COE–2021–0008, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Email: 33CFR203@usace.army.mil. Include the docket number, COE–2021–0008, in the subject line of the message.

Mail: HQ, U.S. Army Corps of Engineers, ATTN: 33CFR203/CECW–HS/3H63, 441 G Street NW, Washington DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Instructions for submitting comments are provided in the proposed rule published on November 15, 2022 (87 FR 68386). Consideration will be given to all comments received by February 16, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Willem H. A. Helms, Office of Homeland Security, Directorate of Civil Works, U.S. Army Corps of Engineers, at (202) 761–5909 or *willem.h.helms@usace.army.mil.*

SUPPLEMENTARY INFORMATION: In the November 15, 2022, issue of the **Federal Register** (87 FR 68386), the Corps published a proposed rule to revise its natural disaster procedures under this part of the Code of Federal Regulations (CFR), which implements a section of the Flood Control Act of 1941, as amended. Revisions will incorporate advances in risk-informed decision-making approaches and disaster response lessons learned, as well as recent amendments to this section of the Flood Control Act of 1941.

We have received requests for an extension of the comment period for the proposed rule. The Corps finds that a 30-day extension of the comment period for this proposed rule is warranted. Therefore, the comment period for this proposed rule is extended until February 16, 2023.

Michael L. Connor,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 2023–00300 Filed 1–9–23; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0294; FRL–9831–01–R5]

Air Plan Approval; Illinois; VOC RACT Requirements for Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) rule revisions submitted by the Illinois Environmental Protection Agency (IEPA or Illinois) on April 13, 2021, and supplemented by a Clean Air Act (CAA) section 110(l) demonstration submitted on October 6, 2022. Illinois requests that EPA approve rule revisions related to control of volatile organic compound (VOC) emissions from aerospace manufacturing and rework facilities into Illinois' SIP. These rule revisions are approvable because they are consistent with the Control Techniques Guidelines (CTG) for Aerospace Manufacturing and Rework Operations published by EPA in 1997, and satisfy the moderate VOC reasonably available control technology (RACT) requirements of CAA section 182(b)(2) for aerospace facilities in the Illinois portion of the St. Louis nonattainment area (Metro-East area) under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). The Metro-East area consists of Madison, Monroe, and St. Clair counties in Illinois.

DATES: Comments must be received on or before February 9, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0294 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kathleen Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *Mullen.Kathleen@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is EPA proposing?

EPA is proposing to approve rule revisions to title 35 of the Illinois Administrative Code (Ill. Adm. Code) part 211 (Definitions and General Provisions) and part 219 (Organic Material Emission Standards and Limitations for the Metro-East Area). These rule revisions implement the control of VOC emissions from aerospace manufacturing and rework operations and satisfy the moderate VOC RACT requirements of CAA section 182(b)(2) for aerospace facilities in the Metro-East Area under the 2015 ozone standard.

II. What is the background for these actions?

VOCs contribute to the production of ground-level ozone, or smog, which harms human health and the environment. CAA sections 172(c)(1) and 182(b)(2) require states to implement RACT in ozone nonattainment areas classified as moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC sources and for all sources covered by a CTG. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. States must submit rules to implement RACT or negative declarations when no such sources exist for CTG source categories.

In December 1997, EPA published a CTG titled ''Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations.'' [1] Illinois did not adopt VOC RACT rules for aerospace facilities at the time because there were no sources that would have been subject to the aerospace CTG requirements.

EPA also promulgated a National Emission Standard for Hazardous Air Pollutants (NESHAP) applicable to aerospace manufacturing and rework facilities on September 1, 1995 (60 FR 45948). The NESHAP is codified at 40 CFR part 63, subpart GG. EPA subsequently amended the NESHAP on December 7, 2015 (80 FR 76152) to incorporate rule revisions to the emission standards for specialty coatings, allow for annual purchase records of certain coatings, exempt two additional application methods, and update definitions.

According to the IEPA submittal, an aerospace facility located in the Metro-East area had indicated that it intended to expand its operations by early 2021. Because Illinois has previously not adopted VOC RACT rules specifically for aerospace facilities, the source would potentially be subject to more general Ill. Adm. Code Section 219.204 regulations for miscellaneous metal parts and products coatings.

On June 4, 2018, EPA designated and classified Madison and St. Clair Counties in Illinois as a marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776) as part of the Metro-East 2015 ozone nonattainment area. In response to the *Clean Wisconsin* v. *EPA* court decision,[2] EPA revised its designation of Monroe County in Illinois to be included in the Metro-East nonattainment area on June 14, 2021 (86 FR 31438). On October 7, 2022, EPA finalized its determination of failure to timely attain and reclassification of Madison, Monroe, and St. Clair Counties in Illinois, as part of the Metro-East area, to moderate nonattainment under the 2015 ozone standard (87 FR 21842).

Pursuant to CAA section 182(b)(2), the Metro-East area is subject to VOC RACT requirements since it is classified as moderate nonattainment under the 2015 ozone NAAQS. Section 182(b)(2) requires states with moderate nonattainment areas to implement VOC RACT with respect to each of the following: (1) all sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all other major non-CTG stationary sources.

These proposed regulations will ensure that the CTG recommended VOC RACT level of control is in place for aerospace facilities located in the Metro-East area and satisfy the VOC RACT requirements of the CAA for aerospace facilities in the Metro-East area.

III. What is EPA's analysis of Illinois' SIP rule revisions?

The proposed amendments to 35 Ill. Adm. Code 211 and 35 Ill. Adm. Code 219 establish definitions, VOC content limitations, work practice standards, recordkeeping, and reporting requirements for applicable aerospace facilities located in the Metro-East Area.

IEPA has determined that three sources in the Metro-East Area would potentially be affected by the proposed aerospace regulations. Two of these sources are currently subject to general rules for miscellaneous metal parts and products coatings, plastic parts and products coatings and pleasure craft coatings found in 35 Ill. Adm. Code part 219. However, aircraft exterior coatings account for the great majority of volume of aerospace coatings used and VOC emissions from these potentially affected sources, and those coatings are currently exempt from the miscellaneous metal parts and products limits. Upon adoption of these proposed aerospace regulations, these exterior coatings will be subject to the primer and topcoat limits in the proposed 35 Ill. Adm. Code 219.204(r)(1). The third source plans to expand its aerospace facility, such that it will be subject to the proposed aerospace regulations.

On October 6, 2022, Illinois submitted a letter clarifying its 110(l) demonstration to EPA. Under CAA section 110(l), EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of [title 42]), or any other applicable requirement of this chapter.'' In the absence of an aerospace coating rule, some coating operations at aerospace facilities in the Metro-East area were subject to requirements of other coating rules in 35 Ill. Adm. Code 219. The VOC content limits of these rules differ for particular coating types from the limits in the proposed regulations. However, aircraft exterior coatings account for the great majority of aerospace coatings used at the potentially affected sources in Illinois, both in volume of coating used and VOC emissions, and those coatings are currently exempt from regulation in Illinois' approved SIP. Incorporating the Illinois aerospace coating rule revisions into the Illinois SIP will result in an overall reduction in VOC emissions from the three affected sources in Illinois. Also, the proposed rule revisions will not result in an increase in emissions of any other pollutant at these existing sources in Illinois. Finally, the proposed rule revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. We propose to find that IEPA's rule revisions to the Illinois SIP to regulate aerospace coatings satisfies the requirements of CAA section 110(l).

The proposed amendments are approvable because they are consistent with the Aerospace CTG and satisfy the VOC RACT requirements of the CAA. A brief discussion of these rule revisions follows.

35 Ill. Adm. Code 211

Rule revisions to this section primarily consist of new definitions that are needed to support the proposed regulations. These new definitions include the following sections: 211.125, 211.234, 211.245, 211.271, 211.272, 211.273, 211.275, 211.277, 211.278, 211.280, 211.284, 211.289, 211.300, 211.303, 211.491, 211.500, 211.520, 211.712, 211.737, 211.975, 211.985, 211.1095,211.1326, 211.1327, 211.1329, 211.1432, 211.1555, 211.1567, 211.1620, 211.1625, 211.1735, 211.1820, 211.1895, 211.1915, 211.2035, 211.2180, 211.2340, 211.2400, 211.2412, 211.2480, 211.2485, 211.2612, 211.2613, 211.2795, 211.2980, 211.3160, 211.3180, 211.3230, 211.3360, 211.3755, 211.3850, 211.3870, 211.3920, 211.4066, 211.4215, 211.4535, 211.5072, 211.5336, 211.5338, 211.5339, 211.5585, 211.5675, 211.5680, 211.5805, 211.5855, 211.5883, 211.5887, 211.5895, 211.5900, 211.5905, 211.5907, 211.6013, 211.6055, 211.6064, 211.6133, 211.6137, 211.6426, 211.6428, 211.6575, 211.6583, 211.6670, 211.6685, 211.6720, 211.7260, 211.7275. These definitions are consistent with the Aerospace CTG and Aerospace NESHAP.

35 Ill. Adm. Code 219

These regulations apply to aerospace coatings and cleaning activities at aerospace facilities located in the Metro-East nonattainment area for the 2015 ozone standard that have the potential to emit 25 tons of VOC or more per year. The regulations below are consistent with, and in some instances more

[1] EPA–453/R–97–004, available at *https://www3.epa.gov/airquality/ctg_act/199712_voc_epa453_r-97-004_aerospace_rework.pdf.*

[2] *Clean Wisconsin* v. *EPA,* 964 F.3d 1145 (D.C. Cir. 2020).

stringent than, the aerospace CTG and aerospace NESHAP.

Section 219.105 Test Methods and Procedures

- Paragraph J contains requirements for cleaning solvents used at aerospace facilities.

Section 219.106 Compliance Dates

- Paragraph F establishes compliance date requirements for aerospace facilities.

Section 219.110 Vapor Pressure of Organic Material or Solvent

- Paragraph D contains an equation for calculating the composite vapor pressure of a cleaning solvent used at aerospace facilities.

Section 219.204 Emission Limitations

- Paragraph R contains VOC content limitations for primers, topcoats, chemical milling maskants, and specialty coatings at aerospace facilities.

Section 219.205 Daily Weighted Average Limitations

- Paragraph K specifies daily weighted average VOC content requirements for coatings at aerospace facilities.

Section 219.207 Alternative Emission Limitations

- Paragraph N establishes the capture system and control device requirements including at least a 90 percent reduction in VOC emissions from aerospace coating operations. This 90 percent reduction in VOC emissions is more stringent than the 81 percent reduction required in the Aerospace CTG.

Section 219.208 Exemptions From Emission Limitations

- Paragraph F contains applicability criteria and exemptions for aerospace coatings and cleaning operations.

Section 219.211 Recordkeeping and Reporting

- Paragraph J contains recordkeeping and reporting requirements for aerospace coatings and cleaning solvents.
- Paragraph K contains the recordkeeping and reporting requirements for exempt aerospace facilities.

Section 219.219 Work Practice Standards for Aerospace Facilities

- Paragraph D specifies activities involving cleaning of aerospace components and vehicles which are not subject to the aerospace work practice standards.
- Paragraph E lists work practice standards for aerospace facilities including proper application methods, storage, mixing, and conveying of aerospace coatings and cleaning solvents.
- Paragraph F contains certain situations which are not subject to the coating application method limitations.
- Paragraph G contains requirements for various types of cleaning activities and cleaning operation exemptions at aerospace facilities.

IV. What action is EPA taking?

EPA is proposing to approve into the Illinois SIP rule revisions to rules relating to the control of VOC emissions from aerospace manufacturing and rework operations (35 Ill. Admin. Code part 211 and 35 Ill. Admin. Code part 219) submitted on April 13, 2021, which Illinois supplemented with a 110(l) demonstration on October 6, 2022. These rule revisions satisfy the moderate VOC RACT requirements of section 182(b)(2) of the CAA for aerospace facilities located in the Metro-East Area under the 2015 ozone standard. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Illinois rules 35 Ill. Admin. Code part 211 and 35 Ill. Admin. Code part 219, effective March 4, 2021, discussed in section III. of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: January 4, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–00245 Filed 1–9–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS–WASO–NAGPRA–33190; PPWOCRADN0–PCU00RP14.550000]

RIN 1024–AE19

Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony—Extension of Public Comment Period

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Department of the Interior is extending the public comment period for the proposed rule to amend regulations to improve implementation of the Native American Graves Protection and Repatriation Act of 1990. Extending the comment period will allow more time for the public to review the proposal and submit comments.

DATES: The comment period for the proposed rule published on October 18, 2022 (87 FR 63202), is extended. Comments must be received by 11:59 p.m. EST on January 31, 2023.

ADDRESSES: You may submit written comments, identified by the Regulation Identifier Number (RIN) 1024–AE19, by any one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail to:* National NAGPRA Program, National Park Service, 1849 C Street NW, Mail Stop 7360, Washington, DC 20240. Attn: Melanie O'Brien, Manager NAGPRA Rule Comments.

Instructions: All submissions received must include the words ''National Park Service'' or ''NPS'' and the RIN (1024–AE19) for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. Written comments will not be accepted by fax, email, or in any way other than those specified above. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, National NAGPRA Program, National Park Service, (202) 354–2201, *melanie_o'brien@nps.gov.*

SUPPLEMENTARY INFORMATION: On October 18, 2022, the Department of the Interior (DOI) published in the **Federal Register** (87 FR 63202) a proposed rule to amend the regulations to improve implementation of the Native American Graves Protection and Repatriation Act of 1990. These proposed regulations would clarify and improve upon the systematic process for the disposition and repatriation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. The proposed changes would provide a step-by-step roadmap for museums and Federal agencies to comply with requirements within specific timelines to facilitate the required disposition and repatriation. The proposed changes would describe the processes in accessible language with clear timelines and terms, reduce ambiguity, and improve efficiency in meeting the requirements. In addition, the proposed changes emphasize consultation in every step and defer to the customs, traditions, and Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations. The public comment period for this proposal is scheduled to close on Tuesday, January 17, 2023. In order to give the public additional time to review and comment on the proposal, the DOI is extending the public comment period until Tuesday, January 31, 2023. Comments previously submitted on the proposed rule need not be resubmitted, as they will be fully considered in preparing the final rule.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–00360 Filed 1–9–23; 8:45 am]

BILLING CODE 4312–52–P

Notices

Federal Register
Vol. 88, No. 6
Tuesday, January 10, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Evidence has been canceled: Evidence Rules Hearing on January 20, 2023. The announcement for this hearing was previously published in the **Federal Register** on August 5, 2022.

DATES: January 20, 2023.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: January 5, 2023.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2023–00292 Filed 1–9–23; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0068]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Movement of Organisms Modified or Produced Through Genetic Engineering

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the movement of organisms and products modified or produced through genetic engineering.

DATES: We will consider all comments that we receive on or before March 13, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0068 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the movement of organisms modified or produced through genetic engineering, contact Mrs. Chessa Huff-Woodard, Branch Chief/Supervisory Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 146, Riverdale, MD 20737; (301) 851–3943. For information about the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator; (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Movement of Organisms Modified or Produced Through Genetic Engineering.

OMB Control Number: 0579–0085.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States.

Under this authority, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has established regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' that govern the movement (importation, interstate movement, or release into the environment) of covered organisms modified or produced through genetic engineering. A permit must be obtained before an organism subject to the regulations may be moved. The regulations set forth the permit application requirements for the movement of an organism subject to the regulations and necessitate certain information collection activities, such as confirmation of exemption requests; regulatory status reviews; applications and procedures for certain APHIS-issued permits and associated State and Tribal reviews; permit appeals; marking or labeling of containers; and maintaining records.

Several activities previously reported under this information collection, Office of Management and Budget (OMB) control number 0579–0085, are being discontinued or replaced with those now listed above. This change in activities is based on a final rule that APHIS published in the **Federal**

Register on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034) [1] that revised the regulations in part 340 and the merging of activities that are currently being reported under OMB control number 0579–0471 (Movement of Certain Genetically Engineered Organisms). Activities being discontinued or grandfathered include requests (petitions) for determination of non-regulated status, field test reporting, and training program documentation. After OMB approves this combined information collection (OMB control number 0579–0085), APHIS will retire OMB control number 0579–0471.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 8.9 hours per response.

Respondents: State, Local, and Tribal government agricultural representatives and applicants from agricultural companies.

Estimated annual number of respondents: 301.

Estimated annual number of responses per respondent: 30.8.

Estimated annual number of responses: 9,283.

Estimated total annual burden on respondents: 82,589 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 5th day of January 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–00284 Filed 1–9–23; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS–22–ELECTRIC–0055]

Notice of Availability of a Record of Decision for Badger State Solar, LLC, Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency within the Department of Agriculture (USDA), has issued a Record of Decision (ROD) to meet its responsibilities in accordance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA, RUS Environmental Policies and Procedure, and other applicable environmental requirements related to providing financial assistance for Badger State Solar's, LLC proposed Alternating Current solar project (Project) in Wisconsin. The Administrator of RUS has signed the ROD, which was effective upon signing. This ROD concludes RUS environmental review process in accordance with NEPA and RUS, Environmental Policies and Procedures. The ultimate decision as to loan approval depends on the conclusion of the environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed. The ROD is not a decision on the Badger State Solar's loan application and is not an approval of the expenditure of federal funds.

DATES: The Administrator of the Rural Utilities Service signed the Record of Decision on December 22, 2022.

ADDRESSES: To request copies of the ROD, contact Peter Steinour at *BadgerStateSolarEIS@usda.gov.* The ROD is also available at RUS website at *https://www.rd.usda.gov/resources/environmental-studies/impact-statements.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Peter Steinour, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Ave. SW, Mail Stop 1570, Washington, DC 20250, by phone at 202–961–6140, or email at *BadgerStateSolarEIS@usda.gov.*

SUPPLEMENTARY INFORMATION:

1. Purpose and Need: Badger State Solar has indicated that it intends to request Federal financing from the USDA RUS for development of the Project. While RUS is authorized under the Rural Electrification Act of 1936 (REA) to finance electric generation infrastructure in rural areas, it is the Midcontinent Independent System Operator, Inc. (MISO), not RUS, who is responsible for electric grid planning. Supporting renewable energy projects meets both RUS's goal to support infrastructure development in rural communities and USDA's support of the June 2013 Climate Action Plan, which encourages voluntary actions to increase energy independence.

2. Project Description: Badger State Solar proposes to construct, install, operate, and maintain a 149-megawatt (MW) photovoltaic (PV) Alternating Current solar energy generating facility on a site in the Townships of Jefferson and Oakland, in Jefferson County, Wisconsin. The total estimated Project cost would be approximately $225,000,000. Project construction is anticipated to begin in November 2022. Construction would be complete, and the Project would be expected to come online by Fall 2023.

The Jefferson County site initially included three proposed development areas: The Primary Solar Array Area, Alternate Solar Array Area, and Optional Solar Array Area. As the solar facility design progressed, Badger State Solar determined that the approximately 1,200-acre Primary Area would be suitable to host the proposed 149 MW solar power facility without requiring development of the Alternate and Optional Areas. The Primary Area became the Proposed Action which is the focus of this Environmental Impact Statement (EIS). The Proposed Action would take place on approximately 1,200 acres located on the north and south sides of US Highway 18 (US 18), approximately 2 miles west of the City of Jefferson and west of State Highway 89. Site land cover is predominantly agricultural crops and pasture, with some forest and wetland.

Construction involves the installation on leased lands of 487,848 single-axis tracking PV panels. The PV panels would be mounted on a steel racking frame. Supporting facilities include an electrical substation. The lease

agreement allows for an operating period of 40 years. A power purchase agreement has been executed with Dairyland Power Cooperative for the entire output of the Proposed Action. The Project site is near the point of interconnection to the grid at the American Transmission Company (ATC) Jefferson substation near the intersection of State Trunk Highway 89 and US 18.

Construction equipment would include graders, bulldozers, excavators, forklifts, trailers, plows, trenchers, pile drivers, and directional boring rigs. Vehicles for transporting construction materials and components primarily would be legal load over-the road flatbed and box trucks. Transport would use existing regional roads, bridges, and intersections. Laydown areas would be established within the Project site. Internal site access roads would be required. Fencing would be placed around contiguous blocks of solar arrays.

Potential locations for development of the solar facility in Wisconsin were evaluated in an initial preliminary site review to identify locations where electric transmission infrastructure would be sufficient to connect a solar project to the power grid. The Site Selection Study consisted of three phases of evaluation which began with 18 potential sites and ended with the identification of the Project site in Jefferson County as the most feasible for consideration. The potential impacts of the No Action Alternative and the Proposed Action, construction of the Badger State Solar project in Jefferson County, Wisconsin, are analyzed in chapter 3 of the Final EIS.

In the EIS, the effects of the proposal are compared to the existing conditions in the affected area of the proposal. Public health and safety, environmental impacts, socio-economic, and engineering aspects of the proposal are also considered in the Final EIS.

The proposed Project is subject to the jurisdiction of the Public Service Commission of Wisconsin (PSCW), Wisconsin Department of Natural Resources (WDNR), Wisconsin Historical Society-Historic Preservation Office (SHPO), Wisconsin Department of Transportation (WisDOT), and the State of Wisconsin Division of Safety and Buildings. Badger State Solar has submitted applications to the PSCW for a Certificate of Public Convenience and Necessity; and either has or will submit applications for permits to the WDNR for an Isolated Wetlands Permit and Wisconsin Pollution Discharge Elimination System/Stormwater Runoff Permit (NR216); WisDOT for a utility permit, driveway/access permit, and oversize/overweight permit; and the State of Wisconsin Division of Safety and Buildings for a Building permit. Badger State Solar may also submit applications for permits as needed to Jefferson County Highway Department (oversize-overweight, utility, county highway entrance), Jefferson County Land Conservation Department (stormwater management), Jefferson County (construction permit, utilities, sanitary permits), Jefferson County Farm District Drainage No. 16 (drainage alteration permit), City of Jefferson (driveway, sign, and building permits) and Town of Oakland (driveway permits). These state and local agency permits would authorize Badger State Solar to construct the proposed project under Wisconsin rules and regulations.

While RUS is authorized under the REA to make loans to finance electric generation infrastructure in rural areas, it is the MISO, not RUS, who is responsible for electric grid planning. Supporting renewable energy projects meets both RUS's goal to support infrastructure development in rural communities and USDA's support of the June 2013 Climate Action Plan. Along with other technical and financial considerations, completing the environmental review process is one of RUS's requirements in processing Badger State Solar's application. RUS is the lead Federal agency for environmental review of the proposed project.

RUS prepared a Final EIS and published a notice of availability in the **Federal Register** on August 26, 2022 (87 FR 52502), to analyze the impacts of its respective Federal actions and the proposed Project in accordance with NEPA, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508), and RUS Environmental Policies and Procedures (7 CFR part 1970). Two comments were received on the Final EIS; one from the Environmental Protection Agency which indicated that their previous comments on the Draft EIS had been addressed in the Final EIS and one from the United States Army Corps of Engineers offering no comment on the Final EIS. No additional revisions to the Final EIS were necessary upon receipt of these comments.

RUS determined that its action regarding the proposed Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposed project on historic properties.

Of the identified archaeological resources within the Area of Potential Effect, none are recommended as eligible for the National Register of Historic Places. However, as a result of the archaeological and architecture/history investigations conducted for the Proposed Action, two of the resources within the Area of Potential Effects were recommended for avoidance or further investigations: a historic cemetery and the William Eustis House. Project activities would avoid the historic cemetery boundaries by a minimum of 10 feet. With regard to the NRHP-eligible William Eustis House, a No Adverse Effect finding was recommended based on the following factors: lack of any potential for physical destruction, damage or alterations to the property; an absence of proposed activities which could alter the architectural character of the Eustis House; and presence of intervening visual intrusions (dense vegetation, trees and barns) between the house and the proposed solar arrays. There would be no adverse effect to NRHP-eligible historical structures. Based on these results, a finding of No Adverse Effect in accordance with 36 CFR 800.5(b) is appropriate for the Proposed Action. RUS submitted this finding in a letter to the Federally recognized tribes and the SHPO in November 2021 and January 2022, respectively. On January 27, 2022, the SHPO concurred the Proposed Action would have no adverse effects to historic properties.

The proposed overhead transmission crossing of U.S. 18 was added to the Proposed Action in February 2022. RUS recommended the finding of No Adverse Effect was still appropriate for the Proposed Action. RUS submitted this finding in a letter to the Federally recognized tribes and the SHPO in March 2022. These letters are on file at RUS. On March 30, 2022, the SHPO concurred the Proposed Action would have no adverse effects to historic properties.

RUS consulted with the following Federally recognized Native American tribes:

- Citizen Potawatomi Nation, Oklahoma
- Forest County Potawatomi Community of Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Ho-Chunk Nation of Wisconsin
- Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin

- Menominee Indian Tribe of Wisconsin
- Miami Tribe of Oklahoma
- Osage Nation
- Prairie Band Potawatomi Nation
- Winnebago Tribe of Nebraska

The Ho-Chunk Nation of Wisconsin, Menominee Tribe of Wisconsin, Miami Tribe of Oklahoma, Osage Nation, and the Winnebago Tribe of Nebraska did not provide objections to the project; however, they requested to be notified of any inadvertent discoveries. A Post-Review Discovery Plan was prepared and in the event of an inadvertent discovery, these Tribes will be contacted. The other Indian tribes consulted did not provide comments.

Based on consideration of the environmental impacts of the proposed Project and comments received throughout the agency and public review process, RUS has determined that Proposed Action Alternative as described above best meets the purpose and need for the proposed Project. RUS finds that the evaluation of reasonable alternatives is consistent with NEPA and RUS Environmental Policies and Procedures. Details regarding RUS regulatory decision and compliance with applicable regulations are included in the ROD.

Andrew Berke,

Administrator, Rural Utilities Service, U.S. Department of Agriculture.

[FR Doc. 2023–00299 Filed 1–9–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the South Dakota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the South Dakota State Advisory Committee to the Commission will convene business meetings on the following Mondays at 12:30 p.m. Central Time: February 13, March 13, and April 10, 2023. The purpose of the business meetings is to discuss testimony heard related to the Committee's topic on voting rights and voter access.

DATES: Mondays at 12:30 p.m. CT: February 13, March 13, and April 10, 2023.

Recurring Zoom Link (video and audio): https://tinyurl.com/3stmv9et; password, if needed: USCCR–SD.

If Joining Briefing by Phone Only, Dial: 1–551–285–1373; Meeting ID: 160 729 5158#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov.*

SUPPLEMENTARY INFORMATION: The meetings are available to the public through the web links above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request other accommodations, please email *mtrachtenberg@usccr.gov* at least 10 business days prior to the meeting for which accommodations are requested.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following each meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during meetings will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Mondays at 12:30 p.m. CT: February 13, March 13, April 10, 2023

I. Welcome and Roll Call

II. Announcements

III. Discussion: Indigent Legal Services Report

IV. Public Comment

V. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00230 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) will hold a virtual business meeting via Zoom on Friday, January 20, 2023, at 1:00 p.m. Eastern Time, for the purpose of discussing and voting on potential panelists for the next virtual public briefing on the New York child welfare system.

DATES: The meeting will take place on Friday, January 20, 2023, from 1:00 p.m.–3:00 p.m. ET.

ADDRESSES:

Registration Link: https://tinyurl.com/a44w8sjc.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll-Free; Webinar ID: 160 070 6362#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or (202) 809–9618.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email Sarah Villanueva at *svillanueva@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to *svillanueva@usccr.gov.* Persons who desire additional information may

contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Briefing Planning and Panelist Selection Vote
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00222 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Colorado Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold business meetings on Wednesdays: January 18 and February 15, 2023; from 3–4 p.m. Mountain Time. The purpose of the meetings is to plan for briefings on school attendance zones. The committee will also hold a briefing on Wednesday, February 1, 2023, from 3–5 p.m. Mountain Time. The purpose of the briefing is to hear from experts on the topic of school attendance zones.

Business Meeting Dates: Wednesdays: January 18 and February 15, 2023; 3–4 p.m. (MT).

Zoom Link for Business Meetings: https://tinyurl.com/279fjudv.

Business Meetings by Phone Only: 1–551–285–1373 (USA Toll Free); Meeting ID: 160 614 2807#.

Briefing Date: Wednesday, February 1, 2023; 3:00 p.m.–5:00 p.m. (MT).

Zoom Link for Briefing: https://tinyurl.com/2s49wt8k.

Briefing by Phone Only: 1–551–285–1373 (USA Toll Free); Meeting ID: 160 058 4700#.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from the meetings may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Business Meeting Agenda

Wednesdays: January 18 and February 15, 2023; 3–4 p.m. (MT)

I. Welcome and Roll Call
II. Briefing Planning
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Briefing Agenda

Wednesday, February 1, 2023; 3:00–5:00 p.m. (MT)

I. Welcome and Roll Call
II. Briefing on School Attendance Zones
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00229 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. MT on Monday, February 6, 2023. The purpose of this meeting is to discuss briefing plans for the Committee's project on housing discrimination.

DATES: The meeting will take place on Monday, February 6, 2023, from 1:00 p.m.–2:30 p.m. MT.

ADDRESSES:

Registration Link (Audio/Visual): https://tinyurl.com/433s6hcw.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 169 936 7244.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, members of the public who wish to speak during public comment must provide their name to the Commission; however, if a member of the public wishes to join anonymously, we ask that you please join by phone. If joining via phone, callers can expect to incur

regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *kfajota@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Announcements & Updates
III. Approval of Meeting Minutes
IV. Briefing Planning: Housing Discrimination
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00225 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agendas and Notices of Public Meetings of the Maine Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Maine Advisory Committee to the Commission will hold virtual monthly meetings for transcript and report discussion on the following Thursdays at 12 p.m. (ET): January 12, February 9, March 9, and April 13, 2023.

DATES:

- Second Thursdays at 12 p.m. Eastern Time: January 12, February 9, March 9, and April 13, 2023.
- January 12, 2023, Thursday; 12 p.m.–1 p.m. ET.

Zoom Link (audio and video): https://tinyurl.com/5yr4dspy; password: USCCR–ME.

If Joining by Phone Only: dial 1–551–285–1373; Meeting ID: 161 655 9331#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or via phone at 202–809–9618.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for these meetings.

Members of the public are entitled to make comments during the open period at the end of the meetings. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact Mallory Trachtenberg at (202) 809–9618. Records and documents discussed during the meetings will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Business Meeting Agendas

Thursdays at 12 p.m. in 2023: 1/12, 2/9, 3/9, and 4/13

I. Welcome & Roll Call
II. Discussion: Briefing Transcripts
V. Public Comment
VI. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00227 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a third briefing on the impact of algorithms on civil rights in Connecticut on Thursday, January 12, 2023, at 2 p.m. (ET). The purpose of the meeting is to continue its work on algorithms.

Date and Time: Thursday, January 12, 2023; 2 p.m. (ET)

Zoom Link (audio/video): https://tinyurl.com/2p9p2vr3; passcode, if needed: USCCR–CT

If Joining by Phone Only: 1–551–285–1373; Meeting ID: 160 490 1057#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting. During the meeting, closed captioning will be available to you as needed.

Members of the public are entitled to make comments during the open comment period towards the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit

at the above phone number or email address.

Agenda

Thursday, January 12, 2023; 2 p.m. (ET)

I. Welcome and Roll Call
II. Business Meeting
III. Public Comment
IV. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00228 Filed 1–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. CT on Thursday, January 26, 2023, to discuss the Committee's next topic of study.

DATES: The meeting will take place on Thursday, January 26, 2023, from 1:00 p.m.–2:00 p.m. CT.

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1612943387.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 294 3387.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, members of the public who wish to speak during public comment must provide their name to the Commission; however, if a member of the public wishes to join anonymously, we ask that you please join by phone. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *dbarreras@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Approval of Meeting Minutes
III. Discussion: Civil Rights Concerns in Minnesota
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 4, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–00226 Filed 1–9–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of Mauricio Robles, Register Number: 35959–508, FCI Sandstone, Federal Correctional Institution, P.O. Box 1000, Sandstone, MN 55072; Order Denying Export Privileges

On December 1, 2021, in the U.S. District Court for the District of Arizona, Mauricio Robles (''Robles'') was convicted of violating 18 U.S.C. 554(a). Specifically, Robles was convicted of smuggling and attempting to smuggle from the US to Mexico, 1,680 rounds of 5.56mm ammunition, 1,000 rounds of 10mm ammunition, 3,200 rounds of 7.62x39mm ammunition, and 50 rounds of 7.62x25mm ammunition. As a result of his conviction, the Court sentenced Robles to 37 months of confinement, with credit for time served, three years of supervised release and $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Robles's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Robles to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Robles.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Robles's export privileges under the Regulations for a period of seven years from the date of Robles's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

Robles had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until December 1, 2028, Mauricio Robles, with a last known address of Register Number: 35959–508, FCI Sandstone, Federal Correctional Institution, P.O. Box 1000, Sandstone, MN 55072, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Robles by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Robles may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Robles and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 1, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–00270 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau Of Industry And Security

In the Matter of: Hany Veletanlic, Inmate Number: 49026–086, FCI Mendota, Federal Correctional Institution, P.O. Box 9, Mendota, CA 93640;

Order Denying Export Privileges

On January 27, 2020, in the U.S. District Court for the Western District of Washington, Hany Veletanlic (''Veletanlic'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C 2778) (''AECA''). Specifically, Veletanlic was convicted of willfully exporting from the U.S. to Sweden defense articles designated on the United States Munitions List, namely a Glock lower 23 receiver, without having obtained from the United States Department of State, a license or written approval for the export of the defense article. As a result of his conviction, the Court sentenced Veletanlic to 85 months of confinement, three years of supervised release and a $400 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''), the export privileges of any person who has been convicted of certain offenses, including, but not limited to, Section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. *See* 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Veletanlic's conviction for violating Section 38 of the AECA. BIS provided notice and opportunity for Veletanlic to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[1] BIS has not received and considered a written submission from Veletanlic.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Veletanlic's export privileges under the Regulations for a period of 10 years from the date of Veletanlic's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Veletanlic had an interest at the time of his conviction.[2]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until January 27, 2030, Hany Veletanlic, with a last known address of Inmate Number: 49026–086, FCI Mendota, Federal Correctional Institution, P.O. Box 9, Mendota, CA 93640, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[2] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Veletanlic by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Veletanlic may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Veletanlic and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 27, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–00272 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–42–2022]

Foreign-Trade Zone (FTZ) 153—San Diego, California; Authorization of Production Activity; Ajinomoto Bio-Pharma Services (Pharmaceutical Products), San Diego, California

On September 7, 2022, the City of San Diego, grantee of FTZ 153, submitted a notification of proposed production activity to the FTZ Board on behalf of Ajinomoto Bio-Pharma Services, within FTZ 153, in San Diego, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 56626, September 15, 2022). On January 5, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 5, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–00307 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Nathan Christopher Ball, 6601 Fountain Hills Place, El Paso, TX 79932; Order Denying Export Privileges

On November 6, 2019, in the U.S. District Court for the District of New Mexico, Nathan Christopher Ball (''Ball'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554(a). Specifically, Ball was convicted of conspiring to smuggle from the US to Mexico, firearms and ammunition without the required license or written authorization. As a result of his conviction, the Court sentenced Ball to 27 months of confinement, two years of supervised release, $300 assessment and $50,000 criminal fine.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Ball's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Ball to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Ball.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Ball's export privileges under the Regulations for a period of five years from the date of Ball's conviction. The Office of Exporter Services has also decided to revoke any

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

BIS-issued licenses in which Ball had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 6, 2024, Nathan Christopher Ball, with a last known address of 6601 Fountain Hills Place, El Paso, TX 79932, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Ball by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Ball may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Ball and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 6, 2024.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–00276 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–33–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on Tuesday, January 31, 2023, 9:30 a.m., (Pacific Standard Time) at the SPIE Photonics West 2023, at the InterContinental San Francisco, 888 Howard Street, in the Intercontinental Ballroom C (5th Floor), San Francisco, CA 94103. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Open Session:

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session:

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. §§ 10(a)(1) and 10(a)(3).

To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than January 24, 2023.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 3, 2023, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. § (l0)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. §§ 10(a)(1) and l0(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–00297 Filed 1–9–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission and Intent To Rescind, in Part; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules, (solar cells) from the People's Republic of China (China) during the period of review (POR), January 1, 2020, through December 31, 2020. We are rescinding this review with respect to Canadian Solar (USA) Inc. Further, we intend to rescind this review with respect to 60 companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Lingjun Wang, 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) 482–3642 or (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2022, Commerce initiated this administrative review of the countervailing duty (CVD) order on solar cells from China with respect to 81 companies.[1] Jinko Solar Import and Export Co., Ltd. (Jinko) and Risen Energy Co., Ltd. (Risen) are the mandatory respondents. On October 26, 2022, Commerce extended the deadline for completion of these preliminary results until no later than January 3, 2023.[2]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by this order are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. For a complete description of the scope of this order, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Because it is not Commerce's practice to review U.S. importers, we are rescinding this review with respect to Canadian Solar (USA) Inc.

Preliminary Intent To Rescind Administrative Review

In accordance with 19 CFR 351.213(d)(3), we intend to rescind this review with respect to 75 companies for which we find no reviewable suspended entries of subject merchandise, based on U.S. Customs and Border Protection (CBP) data. *See* Appendix III for a complete list of these companies.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs preliminarily found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient and that the subsidy is specific.[4] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on facts available with adverse inferences pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Preliminary Rate for Non-Selected Companies Under Review

There are 19 companies for which a review was requested, which had reviewable entries, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. *See* Appendix II. For these companies, because the rates calculated for the mandatory respondents, Jinko and Risen, were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies the simple average of the net subsidy rates calculated for Jinko and Risen This methodology is consistent with our practice for establishing an all-others rate pursuant to section 705(c)(5)(A) of the Act.[5]

Preliminary Results of Review

Commerce preliminarily determines the net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020, are as follows:

Company	Subsidy rate (percent)
Jinko Solar Import and Export Co., Ltd. (Jinko)[6]	10.84
Risen Energy Co., Ltd. (Risen)[7]	21.22
Non-Selected Companies Under Review[8]	16.03

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022).

[2] *See* Memorandum, ''Extension of the Deadline for Preliminary Results,'' dated October 26, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, Rescission in Part, and Preliminary Intent to Rescind in Part: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; 2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019,* 86 FR 33644 (June 25, 2021).

[6] This rate applies to: Jinko Solar Export and Import Co., Ltd. and its cross-owned companies: Zhejiang Jinko Solar Co., Ltd.; JinkoSolar Technology (Haining) Co., Ltd.; Jinko Solar Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; JinkoSolar (Shangrao) Co., Ltd.; Xinjiang Jinko Solar Co., Ltd.; JinkoSolar (Sichuan) Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; Ruixu Industrial Co., Ltd.; and Jinko Solar (Shanghai) Management Co., Ltd.

[7] This rate applies to: Risen Energy Co., Ltd. and its cross-owned companies: Risen (Luoyang) New Energy Co., Ltd.; Risen (Wuhai) New Energy Co.,

Continued

assigned subsidy rates in the amounts for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. 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 Rates

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits in the amounts indicated for the producers/exporters listed above with regard to shipments of subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within seven days after the time limit for filing case briefs.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[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 within 30 days of the publication date of this notice.[12] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether an participant is a foreign national; and (3) 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.

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days after the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II—Non-Selected Companies Under Review

1. Anji Dasol Solar Energy Science & Technology Co., Ltd.
2. BYD (Shangluo) Industrial Co., Ltd.; Shanghai BYD Co., Ltd.
3. Chint New Energy Technology (Haining) Co., Ltd.
4. Chint Solar (Zhejiang) Co., Ltd.
5. JA Solar (Xingtai) Co., Ltd.
6. JA Solar Technology Yangzhou Co., Ltd.
7. Jiangsu High Hope Int'l Group
8. Jiangsu Huayou International Logistics
9. LONGi Solar Technology Co., Ltd.
10. Shanghai JA Solar Technology Co., Ltd.
11. Shenzhen Sungold Solar Co., Ltd.
12. Suntech Power Co., Ltd.
13. Toenergy Technology Hangzhou Co., Ltd.
14. Trina Solar (Changzhou) Science and Technology Co., Ltd.
15. Trina Solar Co., Ltd.
16. Wuxi Tianran Photovoltaic Co., Ltd.
17. Yingli Energy (China) Co., Ltd.
18. Changzhou Trina Solar Energy Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina PV Ribbon Materials Co., Ltd.

Appendix III—Intent To Rescind Review, in Part

1. Canadian Solar Inc.; Canadian Solar International Limited; Canadian Solar Manufacturing; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; CSI Cells Co., Ltd.; CSI Modules (Dafeng) Co., Ltd.; CSI Solar Power (China) Inc.; CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.
2. Changzhou Trina Hezhong Photoelectric Co., Ltd.
3. Trina (Hefei) Science and Technology Co., Ltd.
4. Yancheng Trinasolar Guoneng Science
5. Astronergy Co., Ltd.
6. Astronergy Solar
7. Baoding Jiasheng Photovoltaic Technology Co., Ltd.
8. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
9. Beijing Tianneng Yingli New Energy Resources Co., Ltd.
10. Boviet Solar Technology Co., Ltd.
11. BYD (Shaoguan) Co., Ltd.
12. Chint Solar (HongKong) Company Limited
13. Chint Solar (Jiuquan) Co., Ltd.

Ltd.; Risen Energy (Changzhou) Co., Ltd.; Risen Energy (Ningbo) Co., Ltd.; Risen Energy (Yiwu) Co., Ltd.; Zhejiang Boxin Investment Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Jiangsu Sveck New Material Co., Ltd.; Changzhou Sveck Photovoltaic New Material Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); Changzhou Sveck New Material Technology Co., Ltd.; Ninghai Risen Energy Power Development Co., Ltd.; Risen (Ningbo) Electric Power Development Co., Ltd.; Changzhou Jintan Ningsheng Electricity Power Co., Ltd.; Risen (Changzhou) Import and Export Co., Ltd.; and JiuJiang Shengchao Xinye Technology Co., Ltd. (including JiuJang Shengshao Xinye Technology Co., Ltd. Ruichang Branch).

[8] *See* Appendix II of this notice for a list of all companies that remain under review but were not selected for individual examination and to which Commerce has preliminarily assigned the non-selected company rate.

[9] *See* 19 CFR 35 l.309(c)(l)(ii) and 351.309(d)(l); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

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

[11] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[12] *See* 19 CFR 351.310(c).

14. DelSolar (Wujiang) Ltd.
15. DelSolar Co., Ltd.
16. De-Tech Trading Limited HK
17. Dongguan Sunworth Solar Energy Co., Ltd.
18. Eoplly New Energy Technology Co., Ltd.
19. ERA Solar Co., Ltd.
20. ET Solar Energy Limited
21. Fuzhou Sunmodo New Energy Equipment Co., Ltd.
22. GCL System Integration Technology Co., Ltd.
23. Hainan Yingli New Energy Resources Co., Ltd.
24. Hangzhou Sunny Energy Science and Technology Co., Ltd.
25. Hefei JA Solar Technology Co., Ltd.
26. Hengdian Group DMEGC Magnetics Co., Ltd.
27. Hengshui Yingli New Energy Resources Co., Ltd.
28. JA Solar Co., Ltd. (aka JingAo Solar Co., Ltd.)
29. JA Solar International Limited
30. Jiangsu Jinko Tiansheng Solar Co., Ltd.
31. Jinko Solar International Limited
32. Jiujiang Shengzhao Xinye Technology Co., Ltd.
33. Light Way Green New Energy Co., Ltd.
34. Lixian Yingli New Energy Resources Co., Ltd.
35. Longi (HK) Trading Ltd.
36. Luoyang Suntech Power Co., Ltd.
37. Nice Sun PV Co., Ltd.
38. Ningbo ETDZ Holdings Ltd.
39. Penglai Jutal Offshore Engineering
40. ReneSola Jiangsu Ltd.
41. Renesola Zhejiang Ltd.
42. Risen Energy (HongKong) Co., Ltd.
43. Shenzhen Topray Solar Co., Ltd.
44. Shenzhen Yingli New Energy Resources Co., Ltd.
45. Solar Philippines Module
46. Sumec Hardware and Tools Co., Ltd.
47. Sunpreme Solar Technology (Jiaxing) Co., Ltd.
48. Suntimes Technology Co., Limited
49. Systemes Versilis, Inc.
50. Taimax Technologies Inc.
51. Taizhou BD Trade Co., Ltd.
52. Talesun Energy
53. Talesun Solar
54. tenKsolar (Shanghai) Co., Ltd.
55. Tianjin Yingli New Energy Resources Co., Ltd.
56. Vina Solar Technology Co., Ltd.
57. Wuxi Suntech Power Co., Ltd.
58. Yingli Green Energy International Trading Company Limited
59. Zhejiang ERA Solar Technology Co., Ltd.
60. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

[FR Doc. 2023–00240 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: On November 23, 2022, the U.S. Department of Commerce (Commerce) published the notice of initiation and preliminary results of a changed circumstances review of the antidumping duty order on certain corrosion inhibitors from the People's Republic of China (China). For these final results, Commerce continues to find that Kanghua Chemical Co., Ltd. (Chuzhou Kanghua) is the successor-in-interest to the Nantong Kanghua Chemical Co., Ltd (Nantong Kanghua).

DATES: Applicable January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2022, Chuzhou Kanghua requested that Commerce conduct an expedited changed circumstances review of the antidumping duty order on certain corrosion inhibitors from China,[1] pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), to confirm that Chuzhou Kanghua is the successor-in-interest to Nantong Kanghua for purposes of determining antidumping duty cash deposits and liabilities.[2] In its submission, Chuzhou Kanghua stated that its request was based solely on a change in the Chinese name of the company from ''Nantong Kanghua Chemical Co., Ltd'' to ''Kanghua Chemical Co., Ltd.'' [3]

On November 23, 2022, Commerce initiated this proceeding and published the *Preliminary Results,* preliminarily finding that Kanghua Chemical is the successor-in-interest to Nantong Kanghua.[4] In the *Preliminary Results,* we provided interested parties with an opportunity to provide comments.[5] We received no comments.

Scope of the Order

The merchandise covered by the *Order* is corrosion inhibitors from China. For a full description of the merchandise covered by the scope of *Order, see* the *Preliminary Results* PDM.[6]

Final Results of Changed Circumstances Review

For the reasons stated in the *Preliminary Results,* Commerce continues to find that Kanghua Chemical is the successor-in-interest to Nantong Kanghua. As a result of this determination and consistent with established practice, we find that Kanghua Chemical should receive the cash deposit rate previously assigned to the Nantong Kanghua. Consequently, Commerce will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all shipments of subject merchandise produced and exported by Kanghua Chemical and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 87.11 percent, which is the current antidumping duty cash deposit rate for Nantong Kanghua.[7] For shipments of subject merchandise produced by Kanghua Chemical and exported by Jiangyin Delian Chemical Co., Ltd (Delian), Commerce will instruct CBP to suspend liquidation of shipments of subject merchandise that entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 72.50 percent, which is the current antidumping duty cash

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

[2] *See* Chuzhou Kanghua's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China, A–570–122; Changed Circumstances Review (Kanghua),'' dated August 30, 2022 (CCR Request). We note that the actual request contained a typographical error referencing a different case and case number. We clarified with counsel that the correct case name is ''Certain Corrosion Inhibitors from the People's Republic of China, A–570–122.'' *See* Memorandum, ''Antidumping Administrative Review of Certain Corrosion Inhibitors from the People's Republic of China: Communication with counsel concerning its Request for a Changed Circumstance Review,'' dated September 29, 2022.

[3] *See* CCR Request.

[4] *See Certain Corrosion Inhibitors from the People's Republic of China: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 87 FR 71577 (November 23, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[5] *See Preliminary Results,* 87 FR 71578.

[6] *See Preliminary Results* PDM at 2–3.

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

deposit rate for Delian.[8] These cash deposits requirement shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216(e).

Dated: January 4, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–00308 Filed 1–9–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–838]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Italy was not sold in the United States at less than normal value during the period of review (POR) June 1, 2020, through May 31, 2021. Additionally, Commerce determines that a company for which we initiated a review had no shipments during the POR.

DATES: Applicable January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, 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) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2022, Commerce published the *Preliminary Results.*[1] Commerce extended the deadline for the final results by 60 days until January 4, 2023.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are certain cold-drawn mechanical tubing of carbon and alloy steel from Italy. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

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

Final Determination of No Shipments

As noted in the *Preliminary Results,* we preliminarily determined that Metalfer SpA (Metalfer) had no entries of subject merchandise into the United States during the POR. We received no comments from interested parties with respect to this determination. Therefore, because the record indicates that this company did not export subject merchandise to the United States during the POR, we continue to find that Metalfer had no reviewable transactions during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Metalfer, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[4]

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for Dalmine S.p.A. (Dalmine).[5]

Final Results of Review

Commerce determines that the following weighted-average dumping margin exists for the period June 1, 2020, through May 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Dalmine S.p.A	0.00

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with the final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.

For Dalmine, we will instruct CBP to liquidate its entries during the POR imported by the importers and/or

[8] *Id.*

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2020–2021,* 87 FR 40790 (July 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2020–2021,'' dated October 12, 2022.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[5] *See* Issues and Decision Memorandum at Comments 4 through 7.

customers identified in its questionnaire responses without regard to antidumping duties because Dalmine's weighted-average dumping margin in these final results is zero.[6]

For entries of subject merchandise during the POR produced by Dalmine for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

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

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Dalmine will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 47.87 percent,[8] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: January 4, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

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

[FR Doc. 2023–00309 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Shanghai Tainai Bearing Co., Ltd. (Tainai) sold tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from the People's Republic of China (China) at less than normal value during the period of review (POR), June 1, 2020, through May 31, 2021. Additionally, we find that Tainai and Zhejiang Jingli Bearing Technology Co., Ltd. (Jingli) have each demonstrated that they are eligible for a separate rate.

DATES: Applicable January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Andrew Hart, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–1058.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* [1] on July 8, 2022.[2] Subsequent to the *Preliminary Results,* we received briefs from Tainai and the Timken Company (the petitioner).[3] On September 30, 2022, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing these

[6] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103, 8103 (February 14, 2012).

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

[8] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland,* 83 FR 26962 (June 11, 2018).

[1] *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China,* 52 FR 22667 (June 15, 1987), as amended in *Tapered Roller Bearings from the People's Republic of China; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision Upon Remand,* 55 FR 6669 (February 26, 1990) (collectively, *Order*).

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 40792 (July 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Tainai's Letter, ''Case Brief,'' dated August 15, 2022; and Petitioner's Letter, ''Rebuttal Brief,'' dated August 23, 2022.

final results until January 4, 2023.[4] For a complete description of the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[5]

Scope of the Order

Merchandise covered by the *Order* are tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Analysis of Comments Received

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

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made no changes to the margin calculations for Tainai or the rate assigned to the non-examined, separate-rate respondent.[6]

Non-Examined Separate Rate Respondent

In the *Preliminary Results,* we determined that Jingli demonstrated its eligibility for a separate rate. We received no comments or argument since the issuance of the *Preliminary Results* that provide a basis for reconsideration of this determination. Therefore, for these final results, we continue to find that Jingli is eligible for a separate rate.

Final Results of Review

For the companies subject to this review that established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Shanghai Tainai Bearing Co., Ltd	36.03
Zhejiang Jingli Bearing Technology Co., Ltd	36.03

Disclosure

Normally, Commerce will disclose the calculations performed in connection with the final results of review within five days of the date of publication of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no calculations to disclose for these final results.

China-Wide Entity

In the *Preliminary Results,* we found that C&U Group Shanghai Bearing Co., Ltd. (C&U Group); Hangzhou C&U Automotive Bearing Co., Ltd. (C&U Automotive); Hangzhou C&U Metallurgy Bearing Co., Ltd. (C&U Metallurgy); Hebei Xintai Bearing Forging Co., Ltd. (Hebei Xintai); Huangshi C&U Bearing Co., Ltd. (Huangshi C&U); Sichuan C&U Bearing Co., Ltd. (Sichuan C&U); and Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd. (XTL) failed to rebut *de facto* and *de jure* control by the Government of China.[7] We received no comments on this decision for these final results. Accordingly, we continue to find that C&U Group, C&U Automotive, C&U Metallurgy, Hebei Xintai, Huangshi C&U, Sichuan C&U, and XTL are not eligible for a separate rate and are, therefore, part of the China-wide entity.

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[8] Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change (*i.e.,* 92.84 percent).[9]

Assessment Rates

Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[10] 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**.[11] 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).[12]

For Tainai, Commerce will calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1). Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.[13] Where the respondent did not report entered values, Commerce will calculate importer-specific

[4] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated September 30, 2022.

[5] *See* Memorandum, ''Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *Id.*

[7] *See Preliminary Results* PDM at 10–11.

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[9] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987, 3989 (January 22, 2009).

[10] *See* 19 CFR 351.212(b)(1).

[11] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[12] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[13] *See* 19 CFR 351.212(b)(1).

assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[14] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.

For Jingli, we will direct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin determined in these final results.

Commerce determined that C&U Group, C&U Automotive, C&U Metallurgy, Hebei Xintai, Huangshi C&U, Sichuan C&U, and XTL did not qualify for a separate rate. Therefore, we will instruct CBP to assess antidumping duties on these entities' entries of subject merchandise at 92.84 percent, the established weighted-average dumping margin for the China-wide entity.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that currently have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding where the exporter received that separate rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, 92.84 percent; and (4) for all non-Chinese exporters of subject merchandise that have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(2).

Dated: January 4, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

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

[FR Doc. 2023–00303 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–DS–P

[14] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC627]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Archipelagic Plan Team (APT) to discuss fishery management issues and develop recommendations for future management of fisheries in the Western Pacific Region.

DATES: The APT will meet on Wednesday, January 25, 2023, between 11 a.m. and 5 p.m., Hawaii Standard Time (HST). For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held by web conference via WebEx. Audio and visual portions for Archipelagic Plan Team meeting can be accessed at: *https://wprfmc.webex.com/wprfmc/j.php?MTID=m4526329fde8fc45d62fe330b8d997f1.* Web conference access information and instructions for providing public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 552–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220 (voice) or (808) 522–8226 (fax).

SUPPLEMENTARY INFORMATION: The APT meeting will be held on January 25, 2023, from 11 a.m. to 5 p.m., Hawaii Standard Time (HST) (10 to 4 p.m., Samoa Standard Time (SST); 7 a.m. to 1 p.m. on January 26, 2023, Chamorro Standard Time (ChST)). Opportunities to present oral public comment will be provided on the agenda. The order of the agenda may change, and will be announced in advance at the meeting. The meeting may run past the scheduled times noted above to complete scheduled business.

Agenda for the Archipelagic Plan Team Meeting

Wednesday, January 25, 2023, 11 a.m. to 5 p.m., HST (10 a.m. to 4 p.m., SST; Thursday, January 26, 2023, 7 a.m. to 1 p.m., ChST)

1. Welcome and introductions
2. Approval of draft agenda
3. Review of the Bottomfish Management Unit Species MSA Component Working Group Reports
4. Next steps for the refinement of uku Essential Fish Habitat
5. Discussion/review of Kona Crab Status Determination Criteria
6. APT Working Group updates on Stock Assessment and Fishery Evaluation report improvement projects
7. Public Comment
8. Other Business
9. Plan Team Discussion and Recommendations

Special Accommodations

These meetings are accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to Kitty M. Simonds (see **FOR FURTHER INFORMATION CONTACT** above) at least 5 days prior to the meeting date.

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

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00192 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC656]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day in-person meeting with an option for remote participation to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). The Council continues to follow all public safety measures related to *COVID–19* and intends to do so for this meeting.

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, January 24, 25, and 26, 2023, beginning at 9 a.m. each day.

ADDRESSES: The meeting will be held at The Venue at Portwalk Place, 22 Portwalk Place, Portsmouth, NH 03801; telephone (603) 422–6114; online at *https://www.thevenueatportwalkplace.com/meetings.* Join the webinar at *https://attendee.gotowebinar.com/register/9197960552051905627.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 24, 2023

The Council will begin this meeting in Closed Session to discuss appointments to its Scientific and Statistical Committee. At 9:30 a.m., the open session will begin with brief announcements, followed by reports on recent activities from the Council's Chair and Executive Director, the Greater Atlantic Regional Fisheries Office (GARFO) Regional Administrator, the Northeast Fisheries Science Center (NEFSC) Director, the NOAA Office of General Counsel, the Mid-Atlantic Fishery Management Council liaison, staff from the Atlantic States Marine Fisheries Commission (ASMFC), and representatives from the U.S. Coast Guard, NOAA's Office of Law Enforcement, and the Northeast Trawl Advisory Panel. Next, the Council will receive an update from GARFO on: (1) the development of measures under Phase 2 of the Atlantic Large Whale Take Reduction Plan, which are intended to reduce entanglements of large whales in gillnet fisheries; and (2) an overview of the Atlantic Large Whale Take Reduction Team's recommendations on potential measures. The Council will have an opportunity to provide input on the recommendations. Members of the Northeast Fisheries Science Center's Gear Research Team will then give a presentation on engaging the mobile gear fleet to visualize ropeless gear and prevent gear conflicts. This will be followed by a short update on the Council's discussions with the Mid-Atlantic Fishery Management Council to develop sink gillnet measures to protect large whales and Atlantic sturgeon.

After the lunch break, the Council will receive a presentation from the Northeast Fisheries Science Center's Social Sciences Branch on its Greater Atlantic Region Commercial Fishing Business Cost Survey for 2022. The presentation will include information on: (1) survey background and the importance of collecting cost data; (2) improvements and changes from previous surveys; and (3) the upcoming survey implementation schedule and related details. Then, the Habitat Committee will provide its report, which will cover: (1) an update on draft management alternatives for a framework adjustment to the Atlantic Salmon Fishery Management Plan (FMP) to facilitate offshore Atlantic salmon aquaculture; and (2) an update on offshore energy issues and other habitat-related work, including a progress report on the Bureau of Ocean Energy Management's (BOEM) Gulf of Maine offshore wind development activities. As the last item of business for the day, the Council will have a discussion on and decide whether to recommend a control date to potentially limit the movement of limited access general category (LAGC) permits in the Northern Gulf of Maine (NGOM) Atlantic sea scallop fishery.

Wednesday, January 25, 2023

The Council will begin the second day of its meeting with a presentation on and discussion about quantifying, interpreting, and communicating sources of uncertainty in the Council decision-making process. The Monkfish Committee report will follow. The Council will take final action on Framework Adjustment 13 to the Monkfish FMP, which includes specifications for the 2023–2025 fishing years and other measures. The Council will consider additional Scientific and Statistical Committee (SSC) input on acceptable biological catches (ABCs) for all three monkfish fishing years before taking final action. The Council also will revisit its 2023–24 priorities for the Monkfish Research Set-Aside Program. Next, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received both in person and through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf.*

After the lunch break, the Council will take up the Groundfish Committee

report. The Council took final action on Framework Adjustment 65 to the Northeast Multispecies FMP during its December 2022 meeting. During this January 2023 meeting, the Council will possibly revise the framework's ABCs for Atlantic halibut for fishing years 2023–25 after considering the SSC's recommendations. This is the only issue to be discussed under Framework Adjustment 65. In other groundfish actions, the Council will provide recommendations to GARFO on fishing year 2023 recreational measures for Georges Bank cod, Gulf of Maine cod, and Gulf of Maine haddock. The Council also will receive a progress report on the development of metrics for the review process to evaluate the groundfish monitoring system under Amendment 23. Lastly, the Council will receive an update on the 2023 Atlantic Cod Research Track Assessment and ongoing discussions about cod stock structure. The Council will close out the day with a NOAA Fisheries report on results from the November 14–21, 2022 Annual Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Council also will hear recommendations from the Advisory Committee to the U.S. Section of ICCAT.

Thursday, January 26, 2023

The Council will lead off the third day of its meeting with a brief overview of its Risk Policy and provide guidance for its Risk Policy Committee. Then, the Council will discuss and approve its response to the Office of National Marine Sanctuaries' request for information and input on draft regulations for fishing within the proposed Hudson Canyon National Marine Sanctuary. The Ecosystem-Based Fishery Management (EBFM) Committee report will follow. The report will include: (1) a progress report on the prototype Management Strategy Evaluation (pMSE) planning meetings for EBFM and the Georges Bank example Fishery Ecosystem Plan (eFEP); and (2) the EBFM Committee's advice on conducting deep-dive public information workshops for EBFM. The Council next will receive a presentation on the peer-reviewed results of the Research Track Stock Assessments for spiny dogfish and bluefish and then review and approve the Council's harassment prevention policies. Finally, the Council will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00199 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC599]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Groundfish Electronic Monitoring Policy Advisory and Technical Advisory Committees (GEMPAC/TAC) will hold an online meeting, which is open to the public.

DATES: The meeting will be held Tuesday, January 31, 2023, from 9 a.m. to 4 p.m. and Friday, February 3, 2023, from 9 a.m. to 12 p.m., Pacific Time, or until business for each day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Staff Officer, Pacific Council; telephone: (503) 820–2424.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is for the GEMPAC/TAC to review materials and prepare recommendations for the March 2023 Pacific Council meeting regarding potential changes to the Pacific Council's electronic monitoring program.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: January 5, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00304 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC646]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Salmon Bycatch Committee will meet January 25, 2023.

DATES: The meeting will be held on Wednesday, January 25, 2023, from 9 a.m. to 5 p.m. Alaska Time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in-person at the North Pacific Fishery Management Council office, 1007 West Third Ave., Suite 400, Anchorage, AK 99501 or join online through the link at *https://meetings.npfmc.org/Meeting/Details/2972.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council staff; phone: (907) 271–2809 and email: *diana.stram@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, January 25, 2023

The agenda will include: (a) review of the State of Alaska Bycatch Task Force recommendations; (b) Process and timeline for initiating an amendment/analysis; (c) Discussion of regulatory and non-regulatory management measures for consideration including caps and closures considered in 2012; and (d) and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2972* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2972.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2972.*

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00195 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC596]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 Highly Migratory Species (HMS) Hammerhead Sharks Assessment Webinar VII.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 77 HMS Hammerhead Sharks Assessment Webinar VII is scheduled for Tuesday, January 24, 2023, from 12 p.m. to 3 p.m., Eastern Time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Assessment Webinar VII are as follows: discuss any leftover data issues that were not cleared up during the data process, answer any questions that the analysts have, and discuss model development and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00200 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC634]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) will hold a public meeting.

DATES: The meeting will be held Tuesday, January 24 and Wednesday, January 25, 2023, from 8:30 a.m. to 5 p.m., Pacific Standard Time, or until business for the day has been completed, and Thursday, January 26, 2023 from 8:30 a.m. to 12 p.m. or until business for the day has been completed in a hybrid format with the CPSMT meeting in person with live streaming and remote participation options.

ADDRESSES: This meeting will be held at the Pacific Room of the Southwest Fisheries Science Center at 8901 La Jolla Shores Dr., La Jolla, CA 92037. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*).

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to discuss and develop work products and recommendations for the Pacific Council's April 2023 meeting. Topics will include essential fish habitat review and Fishery Management Plan housekeeping. Other items on the Pacific Council's April agenda or future Council agendas may be discussed as well. The CPSMT will also be discussing changes to the CPS stock assessment and fishery evaluation (SAFE) document. The meeting agenda will be available on the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00194 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC606]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Assessment Webinar IV for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Assessment Webinar IV will be held from 1 p.m. to 4 p.m. Eastern, January 24, 2023.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in webinar are as follows:

Participants will discuss modeling approaches for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 4, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00205 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC631]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ). The meeting is a hybrid meeting open to the public offering both in-person and virtual options for participation.

DATES: The meeting will convene Monday, January 30 through Wednesday, February 1, 2023, from 8 a.m. to 5 p.m. and Thursday, February 2, 2023, from 8 a.m. to 4:30 p.m., CST.

ADDRESSES: The meeting will take place at the Hilton Baton Rouge Capitol Center hotel, located at 201 Lafayette Street, Baton Rouge, LA 70801. Please note, in-person meeting attendees will be expected to follow any current safety protocols as determined by the Council, hotel and the City of Baton Rouge, if any. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, January 30, 2023; 8 a.m.–5 p.m., CST

The meeting will begin with the Administrative/Budget Committee reviewing modifications to the Council's Standard Operations Practices and Procedures (SOPPS), and approval of Proposed 2023 Activities and Draft 2023 Budget.

The *Coral* Committee will review Florida Keys National Marine Sanctuary (FKNMS) Proposed Rule Recommendations from Council's Advisory Panels (*Coastal Migratory Pelagics, Coral, Reef Fish, Shrimp, and Spiny Lobster*), receive an update on the Protocol for Cooperative Fisheries Management, Draft Council letter to the FKNMS and Coral Reef Conservation Program Update.

The Sustainable Fisheries Committee will review and discuss Alternative Allocation Approaches and Scientific and Statistical Committee (SSC) Recommendations; receive an Allocation Overview presentation; and, review of SSC recommendations on Acceptable Biological Catch (ABC) Control Rule.

The *Reef Fish* Committee will review Final Action: Framework Action for *Gray Triggerfish* Commercial Trip Limit.

Tuesday, January 31, 2023; 8 a.m.–5 p.m., CST

The *Reef Fish* Committee will reconvene to review and discuss the Individual Fishing Quota (IFQ) Focus Group Outcomes, Program Priorities List and Draft Amendment 56: Modifications to the *Gag Grouper* Catch Limits, Sector Allocations, and Fishing Seasons. The Committee will have a 30-minute break for a working lunch. Following the break, the Committee will review Draft Options: Modifications to Recreational and Commercial *Greater Amberjack* Management Measures and Revised Recreational *Red Snapper* Calibration Ratios.

Wednesday, February 1, 2023; 8 a.m.–5 p.m., CST

The Data Collection Committee will review Final Action: Abbreviated Framework Action to Modify For-hire Trip Declaration Requirements, Modification to Commercial Coastal Logbook Reporting Requirements and Coastal Migratory Pelagics Advisory Panel Recommendations, and receive an Overview Presentation of State Specific Private Angler Licensing and Reporting Requirements currently used to define offshore anglers in each state.

The Outreach and Education (O&E) Committee will receive a presentation on 2022 Communications Analytics and Updated Communications Plan, overview of Recreational Data (MRIP) Storyboard, 2023 Outreach Event Plan and Communications Improvement Plan; and, other items from the O&E Technical Committee Summary.

At approximately 11 a.m., CST, the Council will convene with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes. The Council will receive updates on Return Em' Right Project and Bureau of Ocean Energy Management (BEOM) on Wind Energy Development in the Gulf of Mexico.

The Council will hold public testimony from 1:30 p.m. to 5 p.m., CST on Final Action Items: Framework Action for *Gray Triggerfish* Commercial Trip Limit and Abbreviated Framework Action to Modify For-hire Trip Declaration Requirements; Florida Keys National Marine Sanctuary Proposed Rule; and, open testimony on other fishery issues or concerns. Public comment may begin earlier than 1:30 p.m. CST, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up via the link on the Council website. Registration for virtual testimony is open at the start of the meeting, Monday, January 30th at 8 a.m., CST and closes one hour before public testimony begins on Wednesday, February 1st at 12:30 p.m., CST.

Thursday, February 2, 2023; 8 a.m.–4:30 p.m., CST

The Council will receive Committee reports from Administrative/Budget, Coral, Sustainable Fisheries, Data Collection, Outreach and Education, and Reef Fish Management Committees.

The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Louisiana Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will receive a Litigation Update and discuss any Other Business items.

—*Meeting Adjourns*

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: January 5, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–00305 Filed 1–9–23; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 13, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method)

(2) By mail sent to: AmeriCorps, Attention Amy Borgstrom, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 422–2781, or by email at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 3045–0137.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 10,000.

Total Estimated Number of Annual Burden Hours: 16,667.

Abstract: The proposed information collection activity provides a means to elicit qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions but is not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

AmeriCorps will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

• Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information collection will be used in the same manner as the current information collection.

AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on February 28, 2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. 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. All written comments will be available for public inspection on *regulations.gov*.

Amy Borgstrom,

Associate Director of Policy.

[FR Doc. 2023–00281 Filed 1–9–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of Uniform National Discharge Standards (UNDS) for Vessels of the Armed Forces—Phase III Batch Two

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: DoD has developed internal regulations on the design, construction, installation, and use of marine pollution control devices (MCPDs) to meet performance standards for 11 discharges incidental to the normal operation of a vessel of the Armed Forces into the navigable waters of the United States, the territorial seas, and the contiguous zone, and is making them publicly available.

FOR FURTHER INFORMATION CONTACT: Mike Pletke; Chief of Naval Operations (N45), 2000 Navy Pentagon (Rm 2D253), Washington DC 20350–2000; (703) 695–5184; *michael.r.pletke.civ@us.navy.mil.*

SUPPLEMENTARY INFORMATION: Section 312 of the Clean Water Act (CWA), as amended by Section 325 of the National Defense Authorization Act of 1996, requires the Environmental Protection Agency (EPA) and DoD to develop Uniform National Discharge Standards (UNDS) to control certain discharges incidental to the normal operation of a vessel of the Armed Forces. The EPA and DoD have already issued required joint rules (64 FR 25126 (May 10, 1999) and 85 FR 43465 (July 17, 2020), 40 CFR part 1700). This notice announces that DoD is also issuing a DoD-only internal regulation as part of this requirement. Although issued by DoD alone, the regulation will apply (by agreement with the Department of Homeland Security) not only to DoD but also to the U.S. Coast Guard (at all times, including when it is a Service in the Department of Homeland Security).

Section 312(n)(4) of the CWA requires DoD, in consultation with EPA and the Secretary of the Department in which the U.S. Coast Guard is operating, to promulgate regulations governing the design, construction, installation, and use of MPCDs necessary to meet the discharge performance standards established in the EPA-DoD joint rules. The DoD internal regulations are issued under the authority of the Secretary in DoD Manual 4715.06, Volume 4, ''Regulations on Vessels Owned or Operated by the Department of Defense: Discharges Incidental to Normal Operations,'' which can be found at: *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/471506_vol4.PDF*. There is no notice and comment requirement for the DoD internal regulations because they are internal to the Department and to the Coast Guard and otherwise exempt by 5 U.S.C. 553 (a)(1) and (2). Furthermore, EPA and DoD provided for notice and comment during the promulgation of the joint EPA-DoD regulations, as required by the CWA.

Because EPA and DoD determined that the joint EPA-DoD regulations, once finalized, would have federalism implications, they had several rounds of consultations with state and local governments during the promulgation of the joint EPA-DoD regulations, as described in the final rule at 85 FR 43465, July 17, 2020.

Dated: January 4, 2023.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–00191 Filed 1–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0005]

Agency Information Collection Activities; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0005. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–550–7416.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1880–0542.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 450,000.

Total Estimated Number of Annual Burden Hours: 225,000.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Dated: January 5, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00287 Filed 1–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0003]

Agency Information Collection Activities; Comment Request; Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0003. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Dana Sapatoru, (202) 987–1944.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden.

It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship program.

OMB Control Number: 1840–0829.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 24,000.

Total Estimated Number of Annual Burden Hours: 4,500.

Abstract: The Foreign Language and Area Studies (FLAS) Fellowships program is authorized by 20 U.S.C. 1121(b) and provides allocations of academic year and summer fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate and graduate students undergoing training in modern foreign languages and related area or international studies. This information collection is a survey of FLAS fellows required by 20 U.S.C. 1121(d) which states ''The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this subchapter to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.''

Dated: January 5, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00278 Filed 1–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0001]

Agency Information Collection Activities; Comment Request; Evaluation of the REL West Supporting Early Reading Comprehension Through Teacher Study Groups Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0001. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Nolan, 312–730–1532.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the REL West Supporting Early Reading Comprehension through Teacher Study Groups Toolkit.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 6,012.

Total Estimated Number of Annual Burden Hours: 1,255.

Abstract: The current authorization for the Regional Educational Laboratories (REL) program is under the Education Sciences Reform Act of 2002, Part D, Section 174, (20 U.S.C. 9564), administered by the Department of Education, Institute of Education Sciences (IES), National Center for Education Evaluation and Regional Assistance (NCEE). The central mission and primary function of the RELs is to support applied research and provide technical assistance to state and local education agencies within their region (ESRA, Part D, section 174[f]). The REL program's goal is to partner with educators and policymakers to conduct work that is change-oriented and supports meaningful local, regional, or state decisions about education policies, programs, and practices to improve outcomes for students.

Elementary-grade students in U.S. public schools continue to struggle with reading comprehension, with only 35 percent of 4th-grade students performing at or above proficient on the National Assessment of Educational Progress (NAEP) scores in reading (Hussar et al., 2020). To address this problem in earlier grades, when schools begin reading comprehension instruction, REL West is developing a toolkit to support teachers in implementing evidence-based instructional strategies to improve reading comprehension among students in grades K–3. The toolkit is based on the Improving Reading Comprehension in Kindergarten Through 3rd Grade IES practice guide (Shanahan et al., 2010) and is being developed in collaboration with state and district partners in Arizona. The toolkit contains the following three parts: (1) Initial Diagnostic and On-going Monitoring Instruments, (2) Professional Development Resources, and (3) Steps for Institutionalizing Supports for Evidence-Based Practice.

This study is designed to measure the efficacy and implementation of the REL West-developed toolkit designed to improve reading comprehension among students in grades K–3. The toolkit evaluation team plans to conduct an independent evaluation using a school-level, cluster randomized controlled trial design to assess the efficacy and cost-effectiveness of the school-based professional development resources included in the toolkit. The evaluation will take place in 70 schools across six districts in Arizona and focus on K–3 reading comprehension for all students. The evaluation will also assess how teachers and facilitators implement the toolkit to provide context for the efficacy findings and guidance to improve the toolkit and its future use. The toolkit evaluation will produce a report for district and school leaders who are considering strategies to improve reading comprehension in kindergarten through 3rd grade. The report will be designed to help district and school leaders decide whether and how to use the toolkit to help them implement the practice guide recommendations.

Dated: January 5, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00294 Filed 1–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0130]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Student Aid User Experience Design Research Generic Clearance

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 9, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Student Aid User Experience Design Research Generic Clearance.

OMB Control Number: 1845–0159.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 262,400.

Total Estimated Number of Annual Burden Hours: 74,975.

Abstract: Federal Student Aid (FSA) seeks an extension of its OMB Fast Track Process (5-day) generic clearance to continue to collect qualitative feedback for the Next Generation Financial Services Environment (Next Gen) program. The Next Gen initiative is a comprehensive, FSA-branded customer engagement layer that will create an environment where the Department's customers will receive clear, consistent information and readily accessible self-service options at every stage of the student aid lifecycle. This collection of information is necessary to enable FSA to garner customer and stakeholder qualitative feedback in an efficient, timely manner, in accordance with our commitment to improving service and information delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The insights collected from our customers and stakeholders will help ensure that users have a consistent, efficient, and satisfying experience with FSA's programs.

Dated: January 5, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00280 Filed 1–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Doc Brown LLC	EG23–1–000
Pleasant Hill Solar, LLC	EG23–2–000
Watlington Solar, LLC	EG23–4–000
Baron Winds LLC	EG23–5–000
Buena Vista Energy Center, LLC	EG23–6–000
EnerSmart Imperial Beach BESS LLC.	EG23–7–000

	Docket Nos.
EnerSmart Mesa Heights BESS LLC.	EG23–8–000
FGE Goodnight I LLC	EG23–9–000
AL Solar D, LLC	EG23–10–000
Resurgence Solar I, LLC	EG23–11–000
Resurgence Solar II, LLC	EG23–12–000
West Line Solar, LLC	EG23–13–000
Daggett Solar Power 1 LLC	EG23–14–000
Daggett Solar Power 2 LLC	EG23–15–000
CED Timberland Solar, LLC	EG23–16–000
Daggett Solar Power 3 LLC	EG23–17–000
Old Gold Energy Center, LLC	EG23–18–000
Arroyo Solar LLC	EG23–19–000
Arroyo Energy Storage LLC	EG23–20–000

Take notice that during the month of December 2022, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2021).

Dated: January 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00256 Filed 1–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6470–008]

Winooski Hydroelectric Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6470–008.

c. *Date Filed:* July 30, 2021.

d. *Applicant:* Winooski Hydroelectric Company (WHC).

e. *Name of Project:* Winooski 8 Hydroelectric Project (project).

f. *Location:* On the Winooski River in Washington County, Vermont. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mathew Rubin, General Partner, Winooski Hydroelectric Company, 26 State Street, Montpelier, Vermont 05602; (802) 793–5939; or email at *m@mrubin.biz.*

i. *FERC Contact:* Kristen Sinclair at (202) 502–6587, or *kristen.sinclair@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Winooski 8 Hydroelectric Project (P–6470–008).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The Winooski 8 Hydroelectric Project consists of the following constructed facilities: (1) a 222.5-foot-long, 26-foot-high concrete gravity dam impounding a reservoir with a storage capacity of approximately 20 acre-feet at an elevation of 615 feet mean sea level; (2) a 148-foot-long spillway with 4-foot-high flashboards built into the crest of the dam; (3) a 24-foot-long, hydraulically operated crest gate; (4) a 1,100-square-foot forebay located adjacent to the project impoundment; (5) three hydraulically operated trashracks; (6) a 1,550-square-foot powerhouse that contains two semi-Kaplan turbines and one fixed propeller turbine for a total installed capacity of 856 kilowatts; (7) a 100-foot-long tailrace; (8) a 1,000 kilovolt-amp station transformer connected to the 600-volt generator lead lines approximately 10 feet from the powerhouse; (9) a 10-foot-long, 12.8-kilovolt undergound transmission line connected to an above-ground interconnection pole; and (10) appurtenant facilities. The project generates an average of 3,507 megawatt-hours annually.

WHC proposes to continue to operate the project in an automated run-of-river mode except during planned maintenance activities when generation flows are increased above inflow rates to lower the impoundment water level, followed by WHC storing 10 percent of the inflow to refill the impoundment following the completion of maintenance activities. WHC also proposes to add 3.6 acres to the existing project boundary to enclose a 4,100-foot-long dirt road currently used by WHC to access the dam and powerhouse and to enclose an existing unimproved recreation site that provides access to the river for boating and fishing activities downstream of the dam.

m. In addition to publishing the full text of this document in the **Federal Register**, a copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.,* P–6470).

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.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	March 2023.
Licensee's Reply to REA Comments	April 2023.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: January 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00264 Filed 1–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–2–000]

Commission Information Collection Activities (FERC–923); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden of the information collection FERC–923 (Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators), described below, which will be submitted to the Office of Management and Budget (OMB) for review. The Commission published a 60-day notice on October 27, 2022 in the **Federal Register** and received no comments.

DATES: Comments on the collection of information are due February 9, 2023.

ADDRESSES: Send written comments on FERC–923 (identified by Docket No. IC23–2–000) to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0265 (Mandatory Reliability Standard: Transmission Vegetation Management) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC23–2–000 and FERC–923) to the Commission as noted below. Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) (FERC–923) and/or title(s) (Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select ''Federal Energy Regulatory Commission,'' click ''submit,'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–923, Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators.

OMB Control No.: 1902–0265.

Type of Request: Three-year extension of the information collection requirements described below with no changes to the current reporting requirements.

Abstract: In 2013, the Commission revised its regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to voluntarily share non-public, operational information with each other for the purpose of promoting reliable service and operational planning on either the pipeline's or public utility's system. This helped ensure the reliability of natural gas pipeline and public utility transmission services by permitting transmission operators to share with each other the information that they deem necessary to promote the reliability and integrity of their systems. FERC removed actual or perceived prohibitions to the information sharing and communications between industry entities. The information shared is not submitted to FERC. Rather, the non-public information is shared voluntarily between industry entities. FERC does not prescribe the content, medium, format, or frequency for the information sharing and communications. Those decisions are made by the industry entities, depending on their needs and the situation.

Type of Respondent: Natural gas pipelines and public utilities.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for FERC–923 as:

FERC–923—COMMUNICATION OF OPERATIONAL INFORMATION BETWEEN NATURAL GAS PIPELINES AND ELECTRIC TRANSMISSION OPERATORS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hrs. & cost ($) per response (4)	Total annual burden hrs. & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Public Utility Transmission Operator, communications.	[3] 155	12	1,860	0.5 hrs.; $45.50	930 hrs.; $84,630	546
Interstate Natural Gas Pipelines, communications.	[4] 191	12	2,292	0.5 hrs.; $45.50	1,146 hrs.; $104,286 ..	546
Total	.....	.....	4,152	.....	2,076 hrs.; $188,916 ..	.....

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00265 Filed 1–9–23; 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:		
NONE.		
Exempt:		
1. P–9690–000; P–10481–000; P–10482–000	1–3–2023	FERC Staff.[1]

[1] Comments dated 12/30/2022 from Nancy Herter of the New York State Office of Parks, Recreation and Historic Preservation.

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] Commission staff estimates that the industry's skill set (wages and benefits) for FERC–923 is comparable to the Commission's skill set. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,992 year (or $91 per hour [rounded]).

[3] The estimate for the number of respondents is based on the North American Electric Reliability Corporation (NERC) Compliance Registry as of October 12, 2022, minus the Transmission Operators within ERCOT.

[4] The estimate is based on the number of respondents to the 2021 FERC Forms 2 and 2A (Major and Non-major Natural Gas Pipeline Annual Reports).

Dated: January 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00258 Filed 1–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8015–014]

North Eastern Wisconsin Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of Exemption.

b. *Project No:* 8015–014.

c. *Date Filed:* December 7, 2022.

d. *Applicant:* North Eastern Wisconsin Hydro, LLC.

e. *Name of Project:* Shawano Paper Mills Dam Hydroelectric Project.

f. *Location:* The project is located on the Wolf River in Shawano County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David Fox, Senior Director, Regulatory Affairs, NEW. Hydro, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (201) 306–5616, *David.Fox@eaglecreekre.com*.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–8015–014. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The exemptee seeks to amend the exemption to raise the normal target impoundment elevation from 802.5 feet mean sea level (msl) to a target elevation of 802.9 feet msl on a year-round basis, while continuing to operate the project within the authorized elevation range of 801.83 feet msl and 803.17 feet msl. The exemptee states the amendment is necessary to address concerns related to recreation and boater safety. The proposal would not require any ground disturbing activities or changes to project facilities.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00267 Filed 1–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–31–000]

Commission Information Collection Activities (FERC–574) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission, FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on November 1, 2022.

DATES: Comments on the collection of information are due February 9, 2023.

ADDRESSES: Send written comments on FERC–574 to OMB through

www.reginfo.gov/public/do/PRAMain. Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0116) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–31–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption).

OMB Control No.: 1902–0116.

Type of Request: Three-year extension of the FERC–574 with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–574 to implement the statutory provisions of Sections 1(c), 4, and 7 of the Natural Gas Act (NGA). Natural gas pipeline companies file applications with the Commission furnishing information in order to facilitate a determination of an applicant's qualification for an exemption under the provisions of the section 1(c). If the Commission grants an exemption, the natural gas pipeline company is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation, sale, or resale of natural gas in interstate commerce if: (a) they receive gas at or within the boundaries of the state from another person at or within the boundaries of that state; (b) such gas is ultimately consumed in such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission; and (d) that such State Commission is exercising that jurisdiction. 18 CFR part 152 specifies the data required to be filed by pipeline companies for an exemption.

Type of Respondents: Pipeline companies.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for the information collection as:

FERC–574—GAS PIPELINE CERTIFICATES: HINSHAW EXEMPTION

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost ($) per response	Total annual burden hours & total annual cost ($)	Cost ($) per respondent
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
2	1	2	60 hours; $5,460	120 hours; $10,920	$5,460

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00266 Filed 1–9–23; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–20–000.

Applicants: Leeward Renewable Energy Development, LLC v. *PJM Interconnection, LLC.*

Description: Complaint of Leeward Renewable Energy Development, LLC v. *PJM Interconnection, LLC.*

Filed Date: 12/30/22.

Accession Number: 20221230–5382.

Comment Date: 5 p.m. ET 1/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1410–007; ER13–412–005; ER16–1750–010; ER16–2601–008; ER17–2292–008; ER17–2381–007; ER19–926–001; ER19–1656–007; ER20–2123–005; ER20–2768–005.

[1] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–574 are approximately the same as the Commission's average cost. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour).

Applicants: Greensville County Solar Project, LLC, Hardin Solar Energy LLC, Wilkinson Solar LLC, Dominion Energy Generation Marketing, Inc., Scott-II Solar LLC, Southampton Solar, LLC, Summit Farms Solar, LLC, Eastern Shore Solar LLC, Dominion Nuclear Connecticut, Inc., Virginia Electric and Power Company.

Description: Triennial Market Power Analysis for Northeast Region of Virginia Electric and Power Company, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5398.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–1427–004; ER11–3376–009; ER11–3377–010; ER11–3378–010; ER19–529–010; ER19–1074–010; ER19–1075–010; ER22–192–004; ER22–1019–002.

Applicants: Powell River Energy Inc., Evolugen Trading and Marketing LP, Brookfield Renewable Energy Marketing US LLC, Brookfield Energy Marketing Inc., Brookfield Renewable Trading and Marketing LP, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC, North Hurlburt Wind, LLC, Brookfield Energy Marketing LP.

Description: Updated Market Power Analysis for Northwest Region of Brookfield Energy Marketing LP, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5410.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–1801–008; ER10–1805–009; ER10–2370–007; ER23–101–001; ER23–102–001; ER23–103–001; ER23–104–001.

Applicants: Sunrise Wind LLC, South Fork Wind, LLC, Revolution Wind, LLC, North East Offshore, LLC, NSTAR Electric Company, Public Service Company of New Hampshire, The Connecticut Light and Power Company.

Description: Triennial Market Power Analysis for Northeast Region of The Connecticut Light and Power Company, et al.

Filed Date: 12/29/22.

Accession Number: 20221229–5348.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER10–2196–008; ER10–2740–016; ER13–1141–006; ER13–1142–006; ER13–1143–009; ER13–1144–009; ER14–152–012; ER15–1657–013; ER16–918–005; ER17–1849–007; ER19–1009–002; ER19–1633–003; ER19–1634–003; ER19–1638–003; ER20–528–003; ER20–844–003; ER20–2452–004; ER20–2453–005.

Applicants: Hamilton Patriot LLC, Hamilton Liberty LLC, Hamilton Projects Acquiror, LLC, Lincoln Power, L.L.C., Tiverton Power LLC, Bridgeport Energy LLC, Rumford Power LLC, Revere Power, LLC, Nautilus Power, LLC, Rhode Island State Energy Center, LP, SEPG Energy Marketing Services, LLC, Elgin Energy Center, LLC, Essential Power Rock Springs, LLC, Essential Power OPP, LLC, Essential Power Newington, LLC, Essential Power Massachusetts, LLC, Rocky Road Power, LLC, Lakewood Cogeneration Limited Partnership.

Description: Triennial Market Power Analysis for Northeast Region of Lakewood Cogeneration Limited Partnership, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5405.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–2294–007; ER11–3808–006; ER11–3980–006; ER13–413–007; ER13–534–006; ER13–2103–004; ER13–2414–003; ER15–2330–003; ER16–131–003; ER16–2675–001; ER17–2471–004; ER17–2472–004; ER18–301–003; ER18–664–004; ER18–2013–006; ER18–2435–003.

Applicants: ORNI 41 LLC, Terra-Gen Dixie Valley, LLC, Steamboat Hills LLC, Ormesa LLC, ONGP LLC, ORNI 43 LLC, AltaGas Pomona Energy Storage Inc., Heber Geothermal Company LLC, ORNI 37 LLC, Mammoth Three LLC, ORNI 47 LLC, Mammoth One, LLC, USG Oregon LLC, ORNI 14 LLC, ORNI 39, LLC, ORNI 18, LLC.

Description: Triennial Market Power Analysis for Northwest Region of ORNI 14 LLC, et al.

Filed Date: 12/29/22.

Accession Number: 20221229–5352.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER10–2806–007; ER10–2818–007; ER18–1984–003; ER19–1889–003.

Applicants: Antrim Wind Energy LLC, Big Level Wind LLC, TransAlta Energy Marketing Corporation, TransAlta Energy Marketing (U.S.) Inc.

Description: Triennial Market Power Analysis for Northeast Region of TransAlta Energy Marketing (U.S.) Inc., et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5404.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–2847–006; ER10–2806–006; ER10–2818–006; ER14–963–006.

Applicants: TransAlta Wyoming Wind LLC, TransAlta Energy Marketing Corporation, TransAlta Energy Marketing (U.S.) Inc., TransAlta Centralia Generation LLC.

Description: Triennial Market Power Analysis for Northwest Region of TransAlta Centralia Generation LLC, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5390.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–2895–024; ER10–1427–003; ER10–2460–022; ER10–2461–023; ER10–2463–021; ER10–2466–022; ER10–2917–024; ER10–2918–025; ER10–2920–025; ER10–2921–024; ER10–2922–024; ER10–2966–024; ER10–3167–017; ER11–2201–027; ER11–2383–020; ER11–4029–021; ER12–161–026; ER12–682–023; ER12–1311–021; ER12–2068–021; ER13–17–021; ER13–203–016; ER13–1613–017; ER13–2143–017; ER14–1964–015; ER16–287–010; ER17–482–009; ER19–529–009; ER19–1074–009; ER19–1075–009; ER20–1447–005; ER20–2028–001; ER22–192–003; ER22–1010–002.

Applicants: TerraForm IWG Acquisition Holdings II, LLC, Evolugen Trading and Marketing LP, Bitter Ridge Wind Farm, LLC, Brookfield Energy Marketing US LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Energy Marketing Inc., Brookfield Renewable Trading and Marketing LP, BREG Aggregator LLC, BIF III Holtwood LLC, LSP Safe Harbor Holdings, LLC, Black Bear Development Holdings, LLC, Brookfield White Pine Hydro LLC, Black Bear SO, LLC, Niagara Wind Power, LLC, Blue Sky East, LLC, Stetson Holdings, LLC, Erie Wind, LLC, Bishop Hill Energy LLC, Vermont Wind, LLC, Safe Harbor Water Power Corporation, Evergreen Wind Power III, LLC, Black Bear Hydro Partners, LLC, Rumford Falls Hydro LLC, Hawks Nest Hydro LLC, Great Lakes Hydro America, LLC, Erie Boulevard Hydropower, L.P., Carr Street Generating Station, L.P., Brookfield Power Piney & Deep Creek LLC, Stetson Wind II, LLC, Evergreen Wind Power, LLC, Canandaigua Power Partners II, LLC, Canandaigua Power Partners, LLC, Brookfield Energy Marketing LP, Bear Swamp Power Company LLC.

Description: Updated Market Power Analysis for Northeast Region and Notice of Change in Status of Bear Swamp Power Company LLC, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5399.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–2906–019; ER10–2908–019; ER19–1716–007.

Applicants: Morgan Stanley Energy Structuring, L.L.C., MS Solar Solutions Corp., Morgan Stanley Capital Group Inc.

Description: Triennial Market Power Analysis for Northwest Region of Morgan Stanley Capital Group Inc., et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5392.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–2997–007; ER10–2172–030; ER10–1048–027;

ER10–3018–007; ER10–1143–026; ER10–3030–007.

Applicants: Potomac Electric Power Company, PECO Energy Company, Delmarva Power & Light Company, Commonwealth Edison Company, Baltimore Gas and Electric Company, Atlantic City Electric Company.

Description: Triennial Market Power Analysis for Northeast Region of Atlantic City Electric Company, et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5386.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER10–3297–019.

Applicants: Powerex Corporation.

Description: Triennial Market Power Analysis for Northwest Region of Powerex Corporation.

Filed Date: 12/30/22.

Accession Number: 20221230–5402.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER11–47–016; ER12–1540–014; ER12–1541–014; ER12–1542–014; ER12–1544–014; ER14–594–018; ER14–867–004; ER14–868–005; ER16–323–013; ER17–1930–008; ER17–1931–008; ER17–1932–008; ER19–606–006; ER20–649–004; ER20–2000–003; ER21–2555–001; ER21–2556–001.

Applicants: South River OnSite Generation, LLC, Martinsville OnSite Generation, LLC, Clyde Onsite Generation, LLC, AEP Energy Partners, Inc., AEP Generation Resources Inc., Southwestern Electric Power Company, AEP Texas Inc., Public Service Company of Oklahoma, Ohio Valley Electric Corporation, AEP Retail Energy Partners, AEP Energy, Inc., Ohio Power Company, Wheeling Power Company, Kingsport Power Company, Kentucky Power Company, Indiana Michigan Power Company, Indiana Michigan Power Company, Appalachian Power Company, Ohio Power Company, Kingsport Power Company, Columbus Southern Power Company, Kentucky Power Company, Wheeling Power Company.

Description: Triennial Market Power Analysis for Northeast Region of Appalachian Power Company, et al.

Filed Date: 12/29/22.

Accession Number: 20221229–5351.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER13–1816–018; ER20–2717–003; ER22–941–001; ER22–942–001; ER22–943–001.

Applicants: Wheat Field Wind Power Project LLC, Sagebrush Power Partners, LLC, Arlington Wind Power Project LLC, Crossing Trails Wind Power Project LLC, Sustaining Power Solutions LLC.

Description: Triennial Market Power Analysis for [Central/Southwest Power Pool Inc./Northeast/Northwest/Southeast/Southwest] Region of [Company Name], et al.

Filed Date: 12/30/22.

Accession Number: 20221230–5406.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER14–225–009.

Applicants: New Brunswick Energy Marketing Corporation.

Description: Triennial Market Power Analysis for Northeast Region of New Brunswick Energy Marketing Corporation.

Filed Date: 12/30/22.

Accession Number: 20221230–5393.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER21–2712–001.

Applicants: Heartland Generation Ltd.

Description: Updated Market Power Analysis for Northwest Region of Heartland Generation Ltd.

Filed Date: 12/30/22.

Accession Number: 20221230–5409.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER23–429–000.

Applicants: Southern California Edison Company.

Description: Supplement to November 15, 2022 tariff filing per 35.13(a)(2)(iii: LA, Pier S. Energy Storage Project (WDT1683–SA1205) of Southern California Edison Company.

Filed Date: 12/21/22.

Accession Number: 20221221–5327.

Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: ER23–765–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 6733; Queue No. AF1–286 to be effective 12/7/2022.

Filed Date: 1/4/23.

Accession Number: 20230104–5025.

Comment Date: 5 p.m. ET 1/25/23.

Docket Numbers: ER23–766–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6738 and CSA, SA No. 6739; Queue No. AC2–090 to be effective 12/5/2022.

Filed Date: 1/4/23.

Accession Number: 20230104–5052.

Comment Date: 5 p.m. ET 1/25/23.

Docket Numbers: ER23–767–000.

Applicants: Marathon Power LLC.

Description: Compliance filing: Notice of Succession baseline refiling to be effective 1/5/2023.

Filed Date: 1/4/23.

Accession Number: 20230104–5053.

Comment Date: 5 p.m. ET 1/25/23.

Docket Numbers: ER23–768–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6743; Queue No. AC2–029 to be effective 12/5/2022.

Filed Date: 1/4/23.

Accession Number: 20230104–5076.

Comment Date: 5 p.m. ET 1/25/23.

Docket Numbers: ER23–769–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Filing of a Contribution in Aid of Construction Agreement to be effective 3/6/2023.

Filed Date: 1/4/23.

Accession Number: 20230104–5085.

Comment Date: 5 p.m. ET 1/25/23.

Docket Numbers: ER23–770–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.GLA–SON to be effective 3/6/2023.

Filed Date: 1/4/23.

Accession Number: 20230104–5115.

Comment Date: 5 p.m. ET 1/25/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–326–000.

Applicants: Campanelli Drive Solar 1, LLC.

Description: Refund Report of Campanelli Drive Solar 1 LLC.

Filed Date: 12/30/22.

Accession Number: 20221230–5400.

Comment Date: 5 p.m. ET 1/20/23.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM23–2–000.

Applicants: City of Auburn, Indiana.

Description: Application of City of Auburn, Indiana to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 1/3/23.

Accession Number: 20230103–5510.

Comment Date: 5 p.m. ET 1/24/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR22–4–002.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of North American Electric Reliability Corporation in Response to the November 2, 2022 Commission Order.

Filed Date: 1/3/23.

Accession Number: 20230103–5472.

Comment Date: 5 p.m. ET 1/24/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00257 Filed 1–9–23; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[EEOC–2022–0006]

Draft Strategic Enforcement Plan

AGENCY: U.S. Equal Employment Opportunity Commission.

ACTION: Request for information and comment.

SUMMARY: The U.S. Equal Employment Opportunity Commission (EEOC) seeks public comments on a Draft Strategic Enforcement Plan for 2023—2027 as part of its strategic planning process.

DATES: Comments must be received by February 9, 2023.

ADDRESSES: Submit comments electronically to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit the following information in your comment: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. For the Draft Strategic Enforcement Plan, comments will not be accepted through any other method.

Instructions: All submissions received must include the agency name (EEOC) and agency docket number (EEOC–2022–0006). The EEOC may post comments without change, including personal identifiers, contact information, or other personal information, consistent with the EEOC's confidentiality and other legal obligations.

Docket: For access to the comments received, go to *https://www.regulations.gov.* Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between 9:30 a.m. and p.m., from February 9, 2023 until the Commission publishes the plan in final form. You must make an appointment with library staff to review the comments in the Commission's library by contacting the library staff at (202) 921–3119 (voice), 800–669–6820 (TTY), or 1–844–234–5122 (ASL Video phone).

FOR FURTHER INFORMATION CONTACT: Raymond Windmiller, Executive Officer at *raymond.windmiller@eeoc.gov* or (202) 921–2705. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921–3191 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL Video phone).

SUPPLEMENTARY INFORMATION: Please provide any comments to the Draft Strategic Enforcement Plan as indicated in the **ADDRESSES** section above. This Draft Strategic Enforcement Plan follows from the EEOC's Draft Strategic Plan for 2022–2026 (Agency Docket Number: EEOC–2022–0005). The EEOC already invited the public to comment on the Draft Strategic Plan, which concluded on December 5, 2022. Public comments to the Draft Strategic Plan are available on *https://www.regulations.gov.* Comments to the Draft Strategic Enforcement Plan will be considered before the Commission votes to approve a final Strategic Enforcement Plan.

U.S. Equal Employment Opportunity Commission

Draft Strategic Enforcement Plan

Fiscal Years 2023–2027

Executive Summary

The U.S. Equal Employment Opportunity Commission (EEOC) was created by the landmark Civil Rights Act of 1964 in direct response to calls for racial and economic justice at the historic March on Washington for Jobs and Freedom. As the primary federal agency charged by Congress with enforcing laws against employment discrimination, the EEOC's mission is to prevent and remedy discrimination and enforce civil rights in the workplace. EEOC's vision is fair and inclusive workplaces with equal opportunity for all.

The purpose of the EEOC's Strategic Enforcement Plan is to focus and coordinate the agency's work over a multiple fiscal year (FY) period to have a sustained impact in advancing equal employment opportunity. The agency's first Strategic Enforcement Plan (SEP), adopted for FY 2013–2016, established subject matter priorities and strategies to integrate the EEOC's private, public, and federal sector activities. In adopting the FY 2017–2021 SEP, the Commission reaffirmed its subject matter priorities with some modifications and additions.

In developing the draft FY 2023–2027 SEP, the EEOC sought input from the public through a series of listening sessions and a dedicated email box. At the three public listening sessions, the EEOC heard from a total of 35 witnesses, including representatives from civil rights and workers' rights organizations, unions, employer and human resources representatives, scholars, and attorneys representing plaintiffs and defendants in employment discrimination matters. The EEOC received additional public comments through the dedicated email box.

This SEP updates and refines the EEOC's subject matter priorities to reflect progress in achieving the EEOC's vision of fair and inclusive workplaces with equal opportunity for all, while also recognizing the significant challenges that remain in making that vision a reality. The tragic killing of George Floyd, Breonna Taylor, and so many other Black and brown people remain a painful reminder of systemic racism. The COVID–19 pandemic and its economic fallout continue to disproportionately impact people of color and other vulnerable workers, exposing and magnifying inequalities in our society. And high-profile incidents of bias and violence based on race, religion, national origin, and gender have impacted communities across the country—including Black grocery shoppers and workers in Buffalo, NY; Taiwanese churchgoers in Orange County, CA; patrons at an LGBTQI+ club in Colorado Springs, CO; and Jewish synagogue members in Pittsburgh, PA, among others. While these deep-rooted problems extend far beyond the workplace, the EEOC is committed to doing our part to address systemic discrimination in employment. Addressing inequality in the workplace is a vital step in the fight for justice and equality. The ability to make a living, support a family, and be respected in the workplace based on an individual's skills and experience are critical components of what it means to be human and to enjoy the dignity and sense of self-worth that every individual deserves.

In implementing the Strategic Enforcement Plan, the Commission can—and will—do more to combat employment discrimination, promote inclusive workplaces, and respond to

the national call for racial and economic justice. Among other changes, this SEP:

- Expands the vulnerable and underserved worker priority to include additional categories of workers who may be unaware of their rights under equal employment opportunity laws, may be reluctant or unable to exercise their legally protected rights, or have historically been underserved by federal employment discrimination protections—such as people with intellectual and developmental disabilities, individuals with arrest or conviction records, LGBTQI+ individuals, temporary workers, older workers, individuals employed in low-wage jobs, and persons with limited literacy or English proficiency;
- Refines the recruitment and hiring priority to include limiting access to on-the-job training, pre-apprenticeship or apprenticeship programs, temp-to-hire positions, internships, or other job training or advancement opportunities based on protected status;
- Recognizes employers' increasing use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, and make or assist in hiring decisions;
- Updates the emerging and developing issues priority to include employment discrimination associated with (1) the COVID–19 pandemic and other threats to public health, (2) violations of the newly enacted Pregnant Workers Fairness Act of 2022, and (3) technology-related employment discrimination; and
- Preserves access to the legal system by focusing on overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements.

The Strategic Enforcement Plan will help guide the EEOC's work through all of the agency's activities, including outreach, public education, technical assistance, enforcement and litigation. Through its effective implementation, the agency will continue to advance in the nation's workplaces America's foundational goals of equality and justice for all.

I. Guiding Principles of the Strategic Enforcement Plan

In developing the draft Fiscal Year 2023–2027 Strategic Enforcement Plan (SEP), the Commission relied on three guiding principles, adapted from the principles underlying the prior two SEPs:

A. A Targeted Approach—Focus on Priorities To Maximize the EEOC's Strategic Impact

The EEOC will take a targeted approach to enforcement. A targeted approach empowers Commission staff throughout the agency to direct attention and resources to the specific priorities identified in this SEP, with the goal of positively influencing employer practices and promoting legal compliance. Targeted enforcement will enhance the Commission's ability to prevent and eliminate unlawful employment practices, develop and clarify the law, and advance its mission and the public interest. A targeted approach includes proactive efforts to address SEP priority issues, including using Commissioner Charges and directed investigations.

B. An Integrated Approach—Collaboration, Coordination and Consistency

The EEOC will also ensure that its enforcement is integrated across the agency. An integrated approach means that the EEOC operates as one national law enforcement agency, while also appropriately reflecting local or regional differences. This requires collaboration, coordination and communication between offices, staff, and program areas across the Commission, as well as consistent procedures in public-facing activities throughout the country. An integrated approach means that communications, outreach, education, training, research, and technology enhance and complement administrative and legal enforcement, policy development, and federal sector hearings, appeals, and oversight to advance the agency's mission. An integrated approach also recognizes that, where appropriate, enforcement in the private, public, and federal sectors should be coordinated and consistent.

Further, an integrated approach acknowledges that enforcing workplace civil rights is a shared responsibility that extends beyond the EEOC. For example, the Department of Justice, Department of Labor, Fair Employment Practices Agencies (FEPAs), Tribal Employment Rights Offices (TEROs), and the private bar all play vital roles in preventing and remedying employment discrimination. As a result, it is important that the EEOC continue to collaborate with these entities, and coordinate across the federal government, to advance our shared missions and expand outreach to jobseekers, workers, and employers.

This SEP reaffirms that collaboration, coordination, and sharing of information within the EEOC and with our federal, state, local, and Tribal partners assists the Commission in operating strategically.

C. Accountability and Delivery of Results—Taking Ownership To Achieve Results and Serve the Public Given Existing Resources

As the primary federal agency entrusted by Congress with enforcing the nation's workplace discrimination laws, the EEOC is accountable to the public it serves to ensure its resources are used strategically and effectively to enforce the law and serve those most in need of its assistance. Accountability means taking ownership to achieve results and deliver timely, consistent, and high-quality service to the public given available resources.

II. Principle One: A Targeted Approach To Strengthen Strategic Enforcement

A. Focus on Strategic Impact To Leverage EEOC Resources Most Effectively

To maximize the EEOC's effectiveness as a national law enforcement agency, the Commission must focus on those activities that have the greatest strategic impact. The Commission defines strategic impact as a significant effect on the development of the law or on promoting compliance across a large organization, geographic region, or industry. Relevant factors in determining strategic impact include, among others, the significance of a particular issue, the potential outcome, the number of individuals or employers affected, and the opportunity to prevent or deter future violations and to have broad and lasting impact in advancing equal employment opportunity.

Systemic investigations, resolutions, and lawsuits typically have strategic impact because they involve ''pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company, or geographic location.'' The Commission reaffirms its commitment to a nationwide, strategic, and coordinated systemic program as one of the EEOC's top priorities. The Commission also recognizes that an individual charge or case can have strategic impact, as defined above. Effective strategic enforcement includes a balance of individual and systemic cases, and of national and local issues, recognizing that each may have strategic impact in different and complementary ways.

The Commission's identification of subject matter priorities under this SEP recognizes that focused and collective

work on these areas will also have strategic impact. In addition, the Commission will continue to pursue matters and issues that are not identified as SEP priorities where EEOC enforcement will have a strategic impact in advancing equal employment opportunity.

B. Subject Matter Priorities for Fiscal Years 2023–2027

The Commission's goal in identifying agency-wide subject matter priorities is to ensure that the agency's resources are targeted to prevent and remedy discrimination and advance equal employment opportunity in circumstances where EEOC enforcement is most likely to achieve strategic impact. The EEOC will use all its tools, including enforcement, education and outreach, research, and policy development, to advance the agency's priorities.

The Commission relied on the following criteria to identify subject matter priorities for this SEP:

1. Issues that will have broad impact because of the nature and scope of the employment practices addressed, the number of individuals impacted, or the employers or industries affected;

2. Issues affecting workers who may be unaware of their legal rights or reluctant or unable to exercise their rights;

3. Issues involving developing areas of the law, where the Commission's expertise is particularly valuable;

4. Issues involving policies or practices that impede or impair full enforcement of federal employment discrimination laws; and

5. Issues that may be best addressed by government action, including enforcement, based on the nature of the claim, the types of relief available, practical or legal impediments to private enforcement, or the Commission's access to information, data, and research.

C. Subject Matter Priorities

The following are the EEOC's subject matter priorities for Fiscal Years 2023–2027:

1. Eliminating Barriers in Recruitment and Hiring

The EEOC will focus on recruitment and hiring practices and policies that discriminate against racial, ethnic, and religious groups, older workers, women, pregnant workers and those with pregnancy-related medical conditions, LGBTQI+ individuals, and people with disabilities. These include:

- the use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups;
- job advertisements that exclude or discourage certain demographic groups from applying;
- the channeling, steering or segregation of individuals into specific jobs or job duties due to their membership in a protected group;
- limiting access to on-the-job training, pre-apprenticeship or apprenticeship programs, temp-to-hire positions, internships, or other job training or advancement opportunities based on protected status;
- limiting employees exclusively to temporary work on a basis prohibited by federal employment laws when permanent positions are available for which they are qualified;
- restrictive application processes or systems, including online systems that are difficult for individuals with disabilities or other protected groups to access; and
- screening tools or requirements that disproportionately impact workers based on their protected status, including those facilitated by artificial intelligence or other automated systems, pre-employment tests, and background checks.

The lack of diversity in certain industries and workplaces (such as construction and high tech, among others), especially in growth industries and industries that benefit from substantial federal investment, are also areas of particular concern. Although this priority typically involves systemic cases, a claim by an individual or small group may qualify if it raises a policy, practice, or pattern of discrimination.

2. Protecting Vulnerable Workers and Persons From Underserved Communities From Employment Discrimination

The EEOC will focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other policies and practices that impact particularly vulnerable workers and persons from underserved communities. With respect to employment discrimination, the Commission views the category of vulnerable workers as including:

- immigrant and migrant workers;
- people with developmental or intellectual disabilities;
- individuals with arrest or conviction records;
- LGBTQI+ individuals;
- temporary workers;
- older workers;
- individuals employed in low wage jobs, particularly teen-aged workers employed in such jobs;
- Native Americans/Alaska Natives; and
- persons with limited literacy or English proficiency.

These workers may be unaware of their rights under equal employment opportunity laws, may be reluctant or unable to exercise their legally protected rights, and/or have historically been underserved by federal employment discrimination protections. Factors such as their immigration status, language barriers, education level, poverty and/or economic circumstances, geographic location, isolated work conditions, age, disability status, societal stigma, or lack of employment experience can make these workers particularly vulnerable to discriminatory practices or policies.

To implement this priority, district offices and the agency's federal sector program will identify vulnerable workers and underserved communities in their districts or within the federal sector for focused attention, based on their assessment of how the EEOC can most effectively utilize its resources to address issues of concern for these groups. For example, employment discrimination against Native Americans/Alaska Natives, indigenous people from Latin America, agricultural workers, or individuals with arrest or conviction records might be areas of focus as part of this priority.

3. Addressing Selected Emerging and Developing Issues

The EEOC will continue to prioritize issues that may be emerging or developing, including issues that involve new or developing legal concepts or topics that are difficult or complex. The agency is uniquely suited to address these issues given the EEOC's research, data collection, receipt of charges in the private and public sectors, adjudication of complaints and oversight in the federal sector, and ongoing engagement with stakeholders.

Because of the nature of this priority category, the Commission may add or remove issues through interim amendments to the SEP. The following issues currently fall within this category:

(a) Qualification standards and inflexible policies or practices that discriminate against individuals with disabilities;

(b) Protecting individuals affected by pregnancy, childbirth, and related medical conditions under the Pregnancy Discrimination Act (PDA) as well as pregnancy-related disabilities under the

Americans with Disabilities Act (ADA) and enforcing the provisions of the newly enacted Pregnant Workers Fairness Act, which requires employers to make reasonable accommodations for those affected by pregnancy, childbirth, and related medical conditions;

(c) Addressing discrimination influenced by or arising as backlash in response to local, national or global events.

Current potentially affected individuals or groups include African Americans, individuals of Arab, Middle Eastern, or Asian descent, Jews, Muslims, and Sikhs. Discriminatory bias that falls under this subcategory may also arise as a result of recurring historical prejudices. The discriminatory practices or affected groups or individuals may change during the time period covered by this SEP;

(d) Employment discrimination associated with the COVID–19 pandemic and other threats to public health.

The EEOC hopes that discrimination directly associated with COVID–19 will continue to decline as the nation recovers from the pandemic. Nonetheless, given reports of significant pandemic-related stereotyping and discrimination targeting certain groups—including persons of Asian descent, older workers, and persons with disabilities—the EEOC will continue to be alert to discriminatory practices associated with the COVID–19 pandemic and other threats to public health, such as:

- pandemic-related harassment based on race, national origin, religion, disability, age, gender, or other protected characteristics;
- unlawful denials of accommodations to individuals with disabilities or individuals with sincerely held religious beliefs, practices, or observances;
- unlawful medical inquiries, improper direct threat determinations, or other discrimination related to disabilities that arose during or were exacerbated by the pandemic;
- discrimination against persons who have an actual disability or are regarded as having a disability related to COVID–19, including individuals with long COVID, and pandemic-related caregiver discrimination based on a protected characteristic.

(e) Technology-related employment discrimination.

The EEOC will focus on employment decisions, practices, or policies in which covered entities' use of technology contributes to discrimination based on a protected characteristic. These may include, for example, the use of software that incorporates algorithmic decision-making or machine learning, including artificial intelligence; use of automated recruitment, selection, or production and performance management tools; or other existing or emerging technological tools used in employment decisions.

4. Advancing Equal Pay for All Workers

The EEOC will continue to focus on combatting pay discrimination in all its forms—on the basis of sex under the Equal Pay Act and Title VII, on other protected bases covered by federal anti-discrimination laws, including race, national origin, disability, and age, and at the intersection of protected bases. Because many workers do not know how their pay compares to their coworkers' and, therefore, are less likely to discover and report pay discrimination, the Commission will continue to use directed investigations and Commissioner Charges, as appropriate, to facilitate enforcement.

The Commission will also focus on employer practices that may impede equal pay or contribute to pay disparities and may lead to violations of statutes the Commission enforces, such as pay secrecy policies, retaliating against workers for asking about pay or sharing their pay with coworkers, reliance on past salary history to set pay, or requiring applicants to specify their desired or expected salary at the application stage.

5. Preserving Access to the Legal System

The EEOC will focus on policies and practices that limit substantive rights, discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or impede the EEOC's investigative or enforcement efforts. For example, this priority includes policies or practices that deter or prohibit filing charges with the EEOC or cooperating freely in EEOC investigations or litigation. Specifically, the EEOC will focus on:

(a) overly broad waivers, releases, non-disclosure agreements, or non-disparagement agreements;

(b) unlawful, unenforceable, or otherwise improper mandatory arbitration provisions;

(c) employers' failure to keep applicant and employee data and records required by statute or EEOC regulations; and

(d) retaliatory practices that could dissuade employees from exercising their rights under employment discrimination laws. This subcategory focuses on retaliatory practices that detrimentally impact or otherwise affect employees beyond those engaging in protected activity. For example, this subcategory includes taking unwarranted adverse actions against individuals who other employees are aware have filed discrimination charges or complaints, or against individuals who have openly opposed discriminatory employment practices.

6. Preventing and Remedying Systemic Harassment

Harassment remains a serious workplace problem. Over 34 percent of the charges of employment discrimination the EEOC received between FY 2017 and FY 2021 included an allegation of harassment. The EEOC will continue to focus on combatting systemic harassment in all forms and on all bases—including sexual harassment and harassment based on race, disability, age, national origin, religion, color, sex (including pregnancy, gender identity, and sexual orientation) or a combination or intersection of any of these. A claim by an individual or small group may fall within this priority if it is related to a widespread pattern or practice of harassment. To combat this persistent problem, the EEOC will continue to focus on strong enforcement with appropriate monetary relief and targeted equitable relief to prevent future harassment. The EEOC will also focus on promoting comprehensive anti-harassment programs and practices, including training tailored to the employer's workplace and workforce, using all available agency tools, including outreach, education, technical assistance, and policy guidance.

D. District and Federal Sector-Specific Priorities

The subject matter priorities set forth in the SEP are intended to be broad enough to encompass the needs and priorities of the EEOC's field offices across the country and the federal sector. Nevertheless, District Offices and the Office of Federal Operations may designate additional subject matter priorities for focused attention as needed to address unique or local issues.

E. Implementing SEP Priorities

To maximize the agency's effectiveness, the EEOC's resources must align with its priorities. The following guidelines are intended to ensure that cases and matters that advance the SEP subject matter priorities, as well as other charges and cases that have strategic impact, receive the attention and resources needed to advance equal opportunity and enforce civil rights in the workplace.

The EEOC will use SEP priorities to inform charge prioritization, selection of litigation and amicus briefs, federal sector enforcement, and all other activities across the agency including guidance, outreach, and research. The agency will also continue to pursue matters and issues that are not identified as SEP priorities where EEOC enforcement will have a strategic impact.

1. Charge Prioritization

Since at least 1995, the Commission has categorized charges for priority handling based on the likelihood of an investigation resulting in a finding of reasonable cause to believe that discrimination has occurred. Charge prioritization is a continuous process that occurs throughout the life of a charge; in each case, the investigation should be appropriate to the charge, taking into account the EEOC's resources. Because the demand for the EEOC's services still far exceeds the agency's resources, the Commission must continue to strategically leverage its finite resources to best serve the public and most effectively achieve the goals of the statutes it is charged with enforcing. Clearly defined priorities enable the EEOC to focus resources where government enforcement is most needed and can deliver the greatest impact. Accordingly, a potentially meritorious charge that raises an SEP priority or is likely to have strategic impact should receive priority in charge handling.

2. Litigation Program

The EEOC's litigation program is a critical tool in the agency's efforts to prevent and remedy unlawful employment discrimination and enforce civil rights in the workplace. In developing and selecting cases for litigation, the Office of General Counsel should prioritize meritorious cases that raise SEP priorities or are otherwise likely to have strategic impact. SEP priorities should also be considered in selecting cases for amicus curiae participation.

The Commission encourages the General Counsel, District Directors, and Regional Attorneys to continue to collaborate with the private bar, industry liaison groups, non-profit organizations, the Department of Justice, the Office of Federal Contract Compliance Programs, and other federal, state, and local partners to ensure efficient coordination and support their critical roles in protecting civil rights and ensuring compliance with employment discrimination laws.

3. Systemic Program

Eradicating systemic discrimination has long been one of the EEOC's top priorities, as underscored in the Systemic Task Force Recommendations of 2006, and reaffirmed in EEOC's 2016 review of the Systemic Program, ''Advancing Opportunity—A Review of the Systemic Program of the U.S. Equal Employment Opportunity Commission,'' and in each of the EEOC's prior Strategic Enforcement Plans. The Commission once again reaffirms its commitment to the agency's systemic program as fundamental to advancing the agency's mission to prevent and remedy discrimination in our nation's workplaces. The agency will use the SEP priorities to guide the types of systemic investigations and cases to be pursued by the Commission at the national and local levels. Meritorious systemic charges and cases that raise SEP priorities should be given precedence over other cases to maximize the EEOC's strategic impact.

4. Alternative Dispute Resolution Program

As the Strategic Enforcement Plan focuses resources on SEP priorities, Alternative Dispute Resolution (ADR) continues to be an important tool to provide service to the public and promote timely resolution of discrimination charges against private, state, and local employers as well as complaints in the federal sector. The EEOC's ADR program provides an opportunity for individuals filing charges or complaints of discrimination and employers to convene and discuss their respective positions with a neutral mediator. Successful mediations resolve charges and complaints early in the process, benefiting both workers and employers and conserving agency resources. The Commission encourages ADR as an effective and efficient tool to resolve charges and complaints of discrimination.

5. Federal Sector Hearings, Appeals, Oversight and Outreach

The SEP priorities serve several purposes in the federal sector. First, cases that raise these priorities alert the Commission to the potential need for more extensive legal analysis in federal sector appellate decisions, which also could serve as persuasive authority on related issues in the federal courts. Second, EEOC's federal sector program is responsible for outreach and training to support oversight of federal agency EEO programs. Third, identifying SEP priorities in hearings and appeals provides the EEOC with information about trends in legal or factual issues to support federal sector outreach, training, compliance reviews, and program evaluations.

F. Other Priorities

Chair initiatives should complement, rather than replace, SEP priorities.

III. Principle Two: Integrating Efforts Across EEOC

As noted above, the Commission is committed to an integrated approach at the agency that promotes collaboration, coordination, and sharing of information throughout the agency, beginning with the following requirements:

A. Integrating Administrative Enforcement and Legal Enforcement in the Public and Private Sectors

The Commission has a statutory responsibility to receive, investigate, and attempt to resolve charges of discrimination filed against private sector and state and local employers. If the Commission determines there is reasonable cause to believe discrimination has occurred, the agency attempts to end the alleged unlawful practice through an informal and confidential process known as conciliation. If conciliation is unsuccessful, the Commission has the authority to sue private entities under Title VII, Title I of the ADA, and Title II of GINA. (The Department of Justice has public sector litigation authority under these statutes). The EEOC has the authority to sue both public and private entities under the Equal Pay Act and the ADEA.

Having a seamless, integrated effort between the enforcement unit staff who investigate and conciliate discrimination charges and the legal staff who litigate cases on behalf of the Commission is critical for the agency's work to have significant impact and to provide excellent service to the public. To establish a baseline of consistency across all offices, the SEP requires:

1. Legal-Enforcement Interaction

The Commission reaffirms the importance of regular and meaningful consultation and collaboration between investigative and legal staff throughout investigations and conciliations. Effective administrative and court enforcement of workplace civil rights laws requires that the EEOC's investigative and legal staff communicate and work together to best achieve the EEOC's mission.

The Commission commends the interaction between administrative and legal enforcement that exists in many

offices and encourages headquarters and field office legal and investigative staff to continue to enhance this important collaboration. The Commission also encourages field offices across the country to collaborate to advance the development of the law and develop systemic cases.

2. Coordination of Systemic Enforcement

Effective systemic enforcement requires communication and collaboration between the EEOC's legal and enforcement units, between headquarters and the field, and across EEOC districts. The Commission encourages cross-district and agency-wide collaboration, consultation, and strategic partnerships to avoid duplicating efforts, promote efficiency, and maximize the impact of the EEOC's systemic program.

B. Integrating Federal Sector Activities

The goal of advancing equal opportunity applies in the federal and private sectors, as does the principle of integrated strategies. The Commission encourages the Office of Federal Operations and the Office of Field Programs to continue enhanced communication and coordination within the federal sector. The EEOC's federal sector activities includes its hearings program; appellate program; oversight; and education, training, and outreach programs. It is critical that the Commission leverage its authority and integrate its activities in the federal sector to help federal agencies achieve and maintain ''Model EEO Program'' status, as mandated by Congress.

C. Integrating Education and Outreach Activities

Clear and accessible information is critical to preventing discrimination, promoting compliance with federal EEO laws, and informing individuals of their rights. Investigations, conciliations, and litigation are only some of the means that the EEOC uses to fulfill its mission and vision. Education and outreach programs, as well as regulations, guidance, and training materials, are also cost-effective law enforcement tools because they promote understanding of the law and voluntary compliance. To ensure the public has easy access to information and technical assistance from the EEOC and that the agency is fully integrating the SEP priorities into its education and outreach efforts, the Commission adopts the following strategies:

- Providing up-to-date, accessible guidance on the requirements of employment discrimination laws

The EEOC's Strategic Plan recognizes the importance of preventing employment discrimination and advancing equal employment opportunity through outreach and education. In furtherance of this important objective, the EEOC is focused on efforts to ensure that members of the public are aware of employment discrimination laws, know their rights and responsibilities under these laws, and have access to the EEOC's services, and that employers, federal agencies, unions, and staffing agencies have the information and resources to advance equal employment opportunity, prevent discrimination, and effectively resolve EEO issues. The EEOC is focused on developing and updating its regulations, guidance, training materials, and other information it provides to the public to ensure that applicants, employees, employers, and members of the public are aware of their rights and responsibilities.

To fully integrate education and outreach activities with the EEOC's SEP priorities, the agency commits to leveraging technology, analytics, and innovative outreach strategies to provide the public, including hard to reach communities and those who lack ready access to EEOC resources, greater access to information about their rights and responsibilities.

By using these additional resources, the agency will be better equipped to ensure that information and training provided to the public advances the agency's priorities.

- Promoting promising practices to help prevent discrimination in the workplace

The Commission commits to integrating the SEP priorities into its education and outreach activities by promoting promising practices for employers to help prevent discrimination from occurring. These resources and leading practices will enable all employers to adopt policies and practices to help prevent employment discrimination and advance equal employment opportunity.

D. Integrating Research, Data, and Analytics

Collecting and analyzing data is central to the EEOC's enforcement and educational efforts. The EEOC recognizes the importance of data driven decision-making and the transformative role data can have to make the EEOC more effective in advancing its priorities and serving the public. Since 2018, the Commission has made significant investments in upgrading its ability to collect and use quality data. Notably, the agency created the Office of Enterprise Data and Analytics (OEDA) to promote the use of modern data analytics to facilitate data driven decision-making, including for the purpose of preventing, identifying, investigating, and correcting unlawful employment practices. The EEOC will continue to build its capacity to provide mission-critical evidence and better integrate its information and data policy into the agency's SEP priorities.

E. Collaborating With State and Local Fair Employment Practices Agencies and Tribal Employment Rights Offices

State and local Fair Employment Practices Agencies (FEPAs) and Tribal Employment Rights Offices (TEROs) are critical partners in the EEOC's enforcement of equal employment opportunity laws. The EEOC contracts with FEPAs nationwide to process about 40,000 employment discrimination charges each year. Through a dual-filing process made possible by work-sharing agreements, the agencies avoid duplicating work and make it easier for the public to file charges of discrimination. The EEOC and FEPAs also collaborate in various activities, including investigations, internal training, and outreach events. Similarly, the EEOC contracts with some TEROs who assist the agency in reaching and providing information about non-discrimination laws to tribal and non-tribal members and non-tribal employers operating on or near tribal lands. The TEROs also collaborate with the EEOC by completing interview questionnaire forms for potential charging parties and forwarding them to EEOC field offices.

The EEOC District Offices, FEPAs and TEROs will continue to identify areas for collaboration based on the SEP priorities and the needs in their specific jurisdictions to benefit the public. These areas of collaboration may include, but are not limited to, outreach events and listening sessions with stakeholders to discuss SEP priorities. The district offices will review the effectiveness of the joint activities on an annual basis and adjust as needed.

F. Supporting Private Enforcement of the Federal Anti-Discrimination Laws

The Commission has an obligation to ensure meaningful legal protections for individuals while also effectively using its resources to have the greatest impact. Given its limited resources, the EEOC litigates only a small percentage of reasonable cause findings where conciliation efforts have failed. EEOC staff may share with the parties, to the

extent permitted under the law and as appropriate, information to facilitate swift enforcement and early resolution of charges. To better assist individuals whose charges are not settled or litigated by the EEOC, district offices will provide information to individuals who seek to contact employment law attorneys for further assistance.

G. Collaborating With Other Federal Agencies

The EEOC is the government's lead agency on equal employment opportunity. However, as previously noted, the Department of Justice, the Department of Labor, and other federal agencies also play important roles in enforcing laws prohibiting employment discrimination. The Commission will continue to collaborate with our sister agencies to further our mission.

IV. Principle Three: Delivery of Results

To ensure that the EEOC is achieving results in accordance with the priorities set forth in the SEP, program offices will report progress to the Commission at semi-annual briefings as follows:

- The Office of Field Programs will report on enforcement activities and outreach, education, and training involving SEP priorities.
- The Office of General Counsel will report on litigation involving SEP priorities.
- The Office of Federal Operations will report on federal sector activities implicating SEP priorities.

The midyear briefing will cover the first and second quarters of the fiscal year, and the annual briefing will cover all four quarters.

Effective Date

The SEP is effective the day following approval by the Commission and will remain in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission.

Acknowledgements

The Commission extends its thanks to everyone who participated in the development of the draft SEP, especially the members of the EEOC Strategic Planning Work Group and the SEP Subgroup. The Commission also thanks the EEOC staff who provided feedback on the SEP, the nearly three dozen witnesses who addressed the Commission at the three public listening sessions, and members of the public who submitted comments on the SEP through the dedicated inbox.

Brett A. Brenner,

Acting Deputy Chief Operating Officer, Equal Employment Opportunity Commission.

[FR Doc. 2023–00283 Filed 1–9–23; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2023–N–1]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency), as part of its continuing effort to reduce paperwork and respondent burden, invites public comments on a new information collection titled ''Tech Sprints,'' as required by the Paperwork Reduction Act of 1995 (PRA). This information collection has not yet been assigned a control number by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year control number.

DATES: Interested persons may submit comments on or before February 9, 2023.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Tech Sprints, (No. 2023–N–1)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Office of General Counsel, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Tech Sprints, (No. 2023–N–1).'' Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Liang Jensen, Senior Financial Analyst, *Liang.Jensen@fhfa.gov,* (202) 649–3464; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, requires FHFA to ensure that the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets.[1] Recognizing the significant effects that the regulated entities' potential use of fintech products and innovations could have on the mortgage market and market participants, FHFA has an interest in learning about new and emerging technologies which may have applications in the mortgage space. To obtain information from the public, FHFA plans to conduct a series of competitions called ''Tech Sprints.'' The Tech Sprints will pose ''problem statements'' associated with fintech in the housing finance market and solicit innovative solutions from individuals and entities participating in the Tech Sprint. The Tech Sprint solutions will support the Agency in developing strategies for the regulated entities to advance housing finance fintech in a

[1] 12 U.S.C. 4513(a)(1)(B)(ii).

safe and sound, responsible, and equitable manner.[2]

For each Tech Sprint, FHFA intends to collect information from potential participants through a solicitation for expression of interest to participate in the Tech Sprint, as well as information collected during the Tech Sprint through the solutions to the problem statements presented. FHFA expects participation from market participants in the housing finance industry and other industries, including technology companies, mortgage companies, academics, industry groups, and other members of the public.

B. Burden Estimate

FHFA estimates that two Tech Sprints will be conducted each year over the next three years. The total annualized hour burden imposed upon respondents by this information collection will be 8,200 hours, based on the following calculations:

1. Tech Sprint Applications

FHFA estimates that the average number of individuals applying to participate in each Tech Sprint over the next three years will be 200, with one response per applicant. The estimated time to complete each application is half an hour. Therefore, the estimate for the total annual hour burden for all applications is 200 hours (200 applications × .5 hours per application × 2 Tech Sprints per year = 200 hours).

2. Tech Sprint Participation

FHFA estimates that each Tech Sprint will have an average of 80 participants. Each participant will spend an average of 50 hours participating in the Tech Sprint. Therefore, the estimate for the total annual hour burden for all Tech Sprint participants is 8,000 hours (80 participants × 50 hours per participant × 2 Tech Sprints per year = 8,000 hours).

C. Public Comments Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on November 2, 2022.[3] The 60-day comment period closed on January 3, 2023. FHFA received no comments.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2023–00211 Filed 1–9–23; 8:45 am]

BILLING CODE 8070–01–P

[2] *See, e.g.,* 12 U.S.C. 4501(1) (Congressional recognition that the regulated entities have important public purposes and so need to be managed safely and soundly), and 12 U.S.C. 4501(7) (noting that those public purposes include an affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families).

[3] *See* 87 FR 66183 (Nov. 2, 2022).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 9, 2023.

A. *Federal Reserve Bank of Dallas* (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico;* to acquire Western Bancshares of Clovis, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank of Clovis, Clovis, New Mexico.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–00289 Filed 1–9–23; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicare Payment Advisory Commission (MedPAC) Nominations

AGENCY: U.S. Government Accountability Office.

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. The U.S. Government Accountability Office (GAO) is now accepting nominations for MedPAC appointments that will be effective in May 2023. Nominations should be sent to the email address listed below. Acknowledgement of receipt will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than February 10, 2023, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *MedPACappointments@gao.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory Giusto at (202) 512–8268 or *giustog@gao.gov* if you do not receive an acknowledgement or need additional information. For general information, contact GAO's Office of Public Affairs at (202) 512–4800.

(Authority: 42 U.S.C. 1395b–6)

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2022–27734 Filed 1–9–23; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA OH–23–001, Exploratory/Developmental Grants Related to the World Trade Center Health Program (R21); RFA OH–22–004, World Trade Center Health Research related to WTC Survivors (U01-No Applications with Responders Accepted); and PAR 20–280, Cooperative Research Agreements Related to the World Trade Center Health Program (U01).

Dates: March 21–23, 2023.

Times: 11:00 a.m.–6:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Laurel Garrison, M.P.H., Scientific Review Officer, National Institute for Occupational Safety and Health, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213; Telephone: (513) 533–8324; Email: *LGarrison@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–00243 Filed 1–9–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10594, CMS–10595, CMS–10628 and CMS–10142]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 9, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Provider Network Coverage Data Collection; *Use:* The Patient Protection and Affordable Care Act (Pub. L. 111–148) was signed into law on March 23, 2010. On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was signed into law. The two laws are collectively referred to as the Affordable Care Act (ACA). The ACA established competitive private health insurance markets called Marketplaces, or Exchanges, which gave millions of Americans and small businesses access to affordable, quality insurance options that meet certain requirements. These requirements include ensuring sufficient choice of providers and providing information to enrollees and prospective enrollees on the availability of in-network and out-of-network providers.

In the final rule, the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 (CMS–9937–P), we finalized network adequacy standards for qualified health plan (QHP) issuers, including stand-alone dental plans (SADPs) mostly focused on issuers in QHPs in the Federally-facilitated Exchanges (FFEs). This information collection notice is for two of the standards from the rule: one applying in the FFE and one applying to all QHPs. Specifically, under 45 CFR 156.230(d) and 156.230(e), we require notification

requirements for enrollees in cases where a provider leaves the network and for cases where an enrollee might be seen by an out of network ancillary provider in an in-network setting. These standards will help inform consumers about his or her health plan coverage to better make cost effective choices. The Centers for Medicare and Medicaid Services (CMS) is updating an information collection request (ICR) in connection with these standards. The burden estimates for this ICR included in this package reflects the additional time and effort for QHP issuers to provide these notifications to enrollees. *Form Number:* CMS–10594 (OMB control number 0938–1302); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 374; *Number of Responses:* 374; *Total Annual Hours:* 551,276. (For policy questions regarding this collection contact Nicole Levesque at *nicole.levesque@cms.hhs.gov*).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Third Party Payment of QHP Premiums and Additional Notices for QHP Issuers Data Collection; *Use:* The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Reconciliation Act of 2010 (Pub. L. 111–152), collectively referred to as PPACA, established new competitive private health insurance markets called Marketplaces, or Exchanges, which gave millions of Americans and small businesses access to qualified health plans (QHPs), including stand-alone dental plans (SADPs)-private health and private health and dental insurance plans that have been certified as meeting certain standards.

In the final rule, the Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2017 (CMS–9937–F), we finalized 45 CFR 156.1256, which requires QHP issuers, in the case of a material plan or benefit display error included in 45 CFR 155.420(d)(12), to notify their enrollees of the error and the enrollees' eligibility for a special enrollment period (SEP) within 30 calendar days after the issuer is informed by an Federally-facilitated Exchange (FFE) that the error is corrected, if directed to do so by the FFE. This requirement provides notification to QHP enrollees of errors that may have impacted their QHP selection and enrollment and any associated monthly or annual costs, as well as the availability of an SEP under 155.420(d)(12) for the enrollee to select a different QHP, if desired. The Centers for Medicare and Medicaid Services (CMS) is formally submitting this renewal information collection request (ICR) to OMB for 3-year approval in connection with standards regarding Plan or Display Errors and SEPs. The portion of the ICR related to Third Party Payments has been removed. The burden estimate for the ICR included in this package reflects the time and effort for QHP issuers to provide notifications to enrollees on the ICRs regarding Plan or Display Errors and SEPs. *Form number:* CMS–10595 (OMB control number: 0938–1301); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 374; *Number of Responses:* 374; *Total Burden Hours:* 293. (For questions regarding this collection contact Samantha Nguyen Kella at 816–426–6339).

3. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Initial Request for State Implemented Moratorium Form; *Use:* Congress has enacted section 1866 (j)(7) of the Social Security Act, which allows for the imposition of temporary moratorium. CMS promulgated 42 CFR 424.570 in order to comply with that statute, which requires that prior to implementing state Medicaid moratoria the state Medicaid agency must notify the Secretary in writing, including all of the details of the moratoria, and obtain the Secretary's concurrence with the imposition of the moratoria.

The Initial Request for State Medicaid Implemented Moratorium, named the ''Initial Request for State Medicaid Implemented Moratorium'' has been created to collect that data, in a uniform manner, which the states report to CMS when they request a moratorium. Currently, CMS is collecting this data on an ad-hoc basis, however this process needs to be standardized so that moratoria decisions are being made based on the same criteria each time. The form may be used by states and territories who wish to impose a Medicaid or Children's Health Insurance Program moratorium. CMS will use this information as a standardized method to collect and track state-imposed moratoria requests. *Form number:* CMS–10628 (OMB control number: 0938–1328); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 5; *Number of Responses:* 5; *Total Burden Hours:* 25. (For questions regarding this collection contact Alisha Sanders at 410–786–0671).

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. The MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 555; *Number of Responses:* 4,995; *Total Burden Hours:* 149,850. (For questions regarding this collection contact Rachel Shevland at 410–786–3026).

Dated: January 5, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–00275 Filed 1–9–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Evaluation of Resources To Support the Identification and Care of Children With Prenatal Substance or Alcohol Exposure in the Child Welfare System (New Collection)

AGENCY: Children's Bureau, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Children's Bureau, Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for an evaluation of a set of resources that are

being developed to support the identification and care of children with prenatal substance or alcohol exposure in the child welfare system.

DATES: *Comments due within 30 days of publication.* The Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection effort will gather data from end users of a toolkit of resources sponsored by the Children's Bureau in collaboration with the Centers for Disease Control and Prevention under an interagency agreement. The toolkit is intended to support child welfare agency staff in the identification and support of children living with prenatal exposure to alcohol and other substances. The data collected will be used in a formative evaluation of the toolkit, which will be guided by three research questions: (1) To what degree do agency staff find toolkit resource to be relevant and applicable to their work?; (2) To what degree do toolkit resources change agency staff attitudes and increase staff knowledge?; (3) What implementation approaches and organizational supports facilitate toolkit use by child welfare agencies? Proposed data sources for this effort include five surveys: (1) a survey to measure users' reactions to the toolkit; (2) a survey of users' attitudes toward Prenatal Alcohol Exposure (PAE)-related issues; (3) a survey of users' knowledge about PAE-related issues; and (4 and 5) two versions of a survey of transfer potential and perceived competence, which measures users' sense of competence in PAE-related knowledge and skills and the extent to which users believe they will transfer knowledge/skills to their work. One version of this instrument contains the full survey and will be administered after users have been exposed to the full toolkit and its resources. The second version contains a smaller selection of key items from the survey, tailored to collect information from users after their exposure to each of five key modules of the toolkit. All data will be collected over the course of 6–9 months in 2023.

Respondents: Child welfare professionals, including state and/or county-level directors of child welfare agencies; supervisors; program staff (*e.g.,* investigation/intake, case management, foster care/adoption/permanency, etc.); staff working in specialist roles that align with toolkit resources (*e.g.,* data/quality improvement specialists); local or state agency managers involved in determining agency strategic plans and practice guidance (*e.g.,* substance-exposed newborn program manager); training system lead staff.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
Survey of reactions to the toolkit	32	1	.05	2
Survey of attitudes	32	2	.17	11
Survey of PAE-related knowledge	32	3	.27	26
Survey of transfer potential and perceived competency	32	1	.09	3
Module-specific transfer potential and perceived competency items	32	5	.03	5

Estimated Total Annual Burden Hours: 47.

Authority: Child Abuse Prevention and Treatment Act Reauthorization Act, 42 U.S.C. 5105, (2010).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–00306 Filed 1–9–23; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the meeting on January 30 and 31, 2023, the Advisory Council will hear presentations on issues related to clinical practice and plans for advanced care planning. The second day presentations will review the impact of new drug approvals and focus on risk reduction and social determinants of health. The National Institute of Neurological Disorders and Stroke (NINDS) will present research milestones from the 2022 ADRD summit and other Federal agencies will also provide updates.

DATES: The meeting will be held virtually on January 30th from 12:30 p.m. to 4:30 p.m. EST and January 31st from 12:30 p.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be virtual. It will stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. on Tuesday January 31st. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Thursday, January 26. Registered commenters will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. **NOTE:** There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is

important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. All participant audio lines will be muted for the duration of the meeting and only unmuted by the Host at the time of the participant's public comment. Should you have questions during the session email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Wednesday, February 1, 2023. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Wednesday, February 1, 2023 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov*. Note: The meeting will be available to the public live at *www.hhs.gov/live.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: clinical care, dementia risk reduction, social determinants of health.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available, after the meeting.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 23, 2022.

Benjamin Sommers,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation, Deputy Assistant Secretary for Health Policy.

[FR Doc. 2023–00290 Filed 1–9–23; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authorities

Notice is hereby given that I have delegated to the Administrator, Centers for Medicare & Medicaid Services (CMS) with authority to re-delegate the authorities vested in me as the Secretary of Health and Human Services pursuant to the Inflation Reduction Act (IRA, Pub. L. No: 117–169). The authority delegated is delineated in the following IRA provisions Sections 11001–11002: Drug Price Negotiation, 11101: Part B Inflation Rebate, and 11102: Part D Inflation Rebate. This delegation of authority would support the Federal Government's efforts under the IRA to reduce prices for select high-cost drugs under Medicare Parts B and D (sections 11001–11004) and curb drug price increases to below the rate of inflation (sections 11101 and 11102). Without this delegation of authority, CMS would not be able to fully administer, implement, and operate these programs and initiatives consistent with the IRA.

I hereby affirm and ratify any actions taken by the Administrator, CMS, or other CMS officials, which involve the exercise of these authorities prior to the effective date of this delegation.

This delegation of authority is effective immediately.

This delegation of authority may be re-delegated.

This delegation of authority does not impact any other delegations of authority within CMS or in any other Department of Health and Human Services Operating Division or Staff Division.

Dated: January 5, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023–00296 Filed 1–6–23; 4:15 pm]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health: Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the National Institutes of Health (NIH) Zoom website *https://nih.zoomgov.com/j/1605463562?pwd=TEgwWE9TNTlqUGg5THFhbDhPWHJzUT09.*

Name of Committee: Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

Date: February 2, 2023.

Time: 10:00 a.m. to 4:00 p.m., EST.

Agenda: The meeting will include a discussion of recruitment and retention of trainees and barriers thereto.

Place: National Institutes of Health, 1 Center Drive, Building 1, Room 160, Bethesda, MD 20892 (Zoom Meeting).

This meeting is a virtual meeting via Zoom and can be accessed at: *https://nih.zoomgov.com/j/1605463562?pwd=TEgwWE9TNTlqUGg5THFhbDhPWHJzUT09.*

Meeting ID: 160 546 3562

Passcode: 448469

Dial by your location

+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
+1 551 285 1373 US
+1 669 216 1590 US (San Jose)

Join by SIP: sip: 1605463562@sip.zoomgov.com.

Join by H.323

161.199.138.10 (US West)
161.199.136.10 (US East)
Meeting ID: 160 546 3562
Passcode: 448469

Contact Person: Margaret McBurney, Management Analyst, Office of the Deputy Director for Intramural Research, National Institutes of Health, 1 Center Drive, Room 160, Bethesda, MD 20892–0140, (301) 496–1921, *mmcburney@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Office of Intramural Research home page: *https://oir.nih.gov/sourcebook.*

Dated: January 4, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00217 Filed 1–9–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Single-Site and Pilot Clinical Trials Study Section.

Date: February 22–23, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive Room 207–P, Bethesda, MD 20892–7924, 301–827–7942, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 4, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00216 Filed 1–9–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Study Section.

Date: February 23–24, 2023.

Time: 10:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892, (301) 827–4612, *rajiv.kumar@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 4, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00215 Filed 1–9–23; 8:45 a.m.]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2021–1 Phase II: Improving Technologies To Make Large-scale High Titer Phage Preps (Topic 95).

Date: February 3, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Hamilton, MT 59840 (Virtual Meeting).

Contact Person: Dylan P. Flather, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Hamilton, MT 59840, (406) 802–6209, *dylan.flather@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 4, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00247 Filed 1–9–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

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

Proposed Project: Evaluation of the Projects for Assistance in Transition From Homelessness (PATH) Program—Reinstatement

SAMHSA is conducting the federally mandated Evaluation of the PATH program. The PATH grant program, created as part of the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, is administered by SAMHSA's CMHS' Division of State and Community Systems Development. The PATH program is authorized under Section 521 *et seq.* of the Public Health Service (PHS) Act, as amended. The SAMHSA PATH program funds each Fiscal Year the 50 states, the District of Columbia, Puerto Rico, and four U.S. Territories (the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). The PATH grantees make grants to local, public and non-profit organizations to provide the PATH allowable services.

The SAMHSA Administrator is required under Section 528 of the PHS Act to evaluate the expenditures of PATH grantees at least once every three years to ensure they are consistent with legislative requirements and to recommend changes to the program design or operations.

The primary task of the PATH evaluation is to meet the mandates of Section 528 of the PHS Act. The second task of the PATH evaluation is to conduct additional data collection and analysis to further investigate the sources of variation in key program output and outcome measures that are important for program management and policy development. The PATH evaluation builds on the previous evaluation which was finalized in 2016 and was conducted as part of the National Evaluation of SAMHSA Homeless Programs. Previously, the data collections activities also included PATH Intermediary Web Survey, a PATH Provider Web Survey, and a PATH Telephone Interview Guide. The current PATH evaluation will be limited to the State PATH Contact (SPC) Web Survey and PATH Site Visit Discussion Guides to facilitate the collection of information regarding the structures and processes in place at the grantee and provider level. The SPC Web Survey was shortened from 82 to 49 questions. Data regarding the outputs and outcomes of the PATH program will be obtained from grantee applications, providers' intended use plans (IUPs) and PATH annual report data, which is also required by Section 528 of the PHS Act and is approved under OMB No. 0930–0205.

Web Surveys will be conducted with all State PATH Contacts (SPCs). The *Web Surveys* will capture detailed and structured information in the following topics: selection, monitoring and oversight of PATH providers; populations served; the PATH allowable or eligible services provided; sources for match funds; provision of training and technical assistance; implementation of Evidence Based Practices (EBPs) and innovative practices including the SSI/SSDI Outreach, Access, and Recovery program; data reporting, use of data and the Homeless Management Information System; and collaboration, coordination and involvement with Continuums of Care and other organizations. The SPCs for all grantees (n=56) will be contacted to complete the web surveys. The *Web Surveys* will be administered once per triennial evaluation cycle.

Site Visits will be conducted with a purposive sample of PATH grantees and providers to collect more nuanced information than will be possible with the web survey. Semi-structured discussions will take place with the SPCs, grantee staff, PATH provider staff including the Project Director and other key management staffs, outreach workers, case managers and other clinical treatment staff, and consumers. Five grantees will be selected for *Site Visits* and visited within each grantee will be one to two PATH providers. The *Site Visits* will be utilized to collect information on provider and state characteristics; practices and priorities; context within which the grantees and providers operate; and services available within the areas the providers operate. The successes, barriers, and strategies faced by PATH grantees and providers will also be discussed. Focus groups will be held with current or former consumers of the PATH program to obtain consumer perspectives regarding the impact of the programs. The *Site Visits* will be conducted once per triennial evaluation cycle.

The estimated burden for the reporting requirements for the PATH evaluation is summarized in the table below.

ANNUAL BURDEN TABLE

Instrument/activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Web Surveys					
SPC Web Survey	[1] 56	1	56	1	56
Site Visit Interviews					
Opening Session with State Staff	[2] 25	1	25	2	50
SPC Session	[3] 5	1	5	2	10
State Stakeholder Session	[4] 25	1	25	1.5	37.5
Provider Stakeholder Session	[5] 50	1	50	1.5	75
Opening Session with PATH Provider Leadership Staff	[6] 50	1	50	2	100
PATH Provider Project Director Session	[7] 10	1	10	2	20
PATH Direct Care Provider Session	[8] 50	1	50	2	100
Consumer Focus Groups	[9] 100	1	100	1.5	150
Total	371		371		598.5

[1] 1 respondent * 56 SPCs = 56 respondents.
[2] 5 respondents * 5 site visits = 25 respondents.
[3] 1 respondent * 5 site visits = 5 respondents.
[4] 5 respondents * 5 site visits = 25 respondents.
[5] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[6] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[7] 1 respondent * 10 site visits (2 providers per state) = 10 respondents.

[8] 5 respondents * 10 site visits (2 providers per state) = 50 respondents.
[9] 10 respondents * 10 site visits (10 Consumers per provider (2 providers per state) = 100 respondents.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, via email to *carlos.graham@samhsa.hhs.gov.* Written comments should be received by March 13, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–00208 Filed 1–9–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0548.

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

Proposed Project: Projects for Assistance in Transition From Homelessness (PATH) Program Annual Report (OMB No. 0930–0205)—Revision

SAMHSA awards grants each fiscal year to each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (hereafter referred to as ''states''), from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 [Section 521 *et seq.* of the Public Health Service (PHS) Act and the 21st Century Cures Act (Pub. L. 114–255), hereafter referred to as ''the Act'']. Section 522 of the Act, specifies that states must expend their payments solely for making grants to political subdivisions of the state, and to non-profit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for the revision to the approved PATH Annual Report Manual. Section 528 of the Act specifies, not later than January 31 of each fiscal year, a funded entity will ''prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines to be necessary for: (1) securing a record and a description of the purposes for which amounts received under Section 521 were expended during the preceding fiscal year and of the recipients of such amounts; and (2) determining whether such amounts were expended in accordance with the provisions of this part.''

The proposed revision to the PATH 2023 Annual Report Manual are as follows:

Homeless Management Information System (HMIS) Data Standards Updates

When needed, field response options and questions have been updated to align with the most recent version of the HMIS Data Standards.

In July 2022, HUD released updated HMIS programming specifications (Version 3.6) for the PATH Annual Report, which changed the instructions for counting contacts in questions 12a and 12b. HMIS vendors received these programming updates and HUD encouraged them to implement the changes by October 1, 2022. When providers run their PATH Annual Report in HMIS, it should reflect Version 3.6, including these most recent programming changes. In October 2022, SAMHSA launched a new PDX website for State Path Contacts (SPCs) and providers, who will use the site to enter provider-level data for their PATH Annual Report and progress reports. User guides were created to describe the features and functions of the new PDX site and provides guidance for reviewing and submitting PATH Annual Reports, setting up and reviewing progress reports, and accessing PATH resources. The requested revisions will not increase the overall burden.

The estimated annual burden for these reporting requirements is summarized in the table below.

Respondents	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total burden
States	56	1	15	840
Local provider agencies	437	1	15	6,555
Total	493	.....	.....	7,395

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, *OR* email a copy to *carlos.graham@samhsa.hhs.gov.* Written comments should be received by March 13, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–00202 Filed 1–9–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning the opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

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

Proposed Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Extension

SAMHSA will request OMB approval for extension of the Federal Drug Testing Custody and Control Form (CCF) for federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) dated January 23, 2017 (82 FR 7920) and using Oral Fluid (OFMG) dated October 25, 2019, and OMB approval for information provided by test facilities (laboratories and Instrumented Initial Test Facilities, IITFs) for the National Laboratory Certification Program (NLCP).

The CCF is used by all federal agencies and employers regulated by the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) to document the collection and chain of custody of urine specimens at the collection site, for HHS-certified test facilities to report results, and for Medical Review Officers (MROs) to document and report a verified result. SAMHSA allows the use of the CCF as a paper or electronic form. Laboratories and IITFs seeking HHS certification under the NLCP must complete and submit the NLCP application form. The NLCP application form is without change. Prior to an inspection, an HHS-certified laboratory or IITF is required to submit specific information regarding its procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the testing procedures before arriving for the onsite inspection. The NLCP information checklist is without change.

The current OMB-approved CCF has an August 31, 2023 expiration date. SAMHSA plans to submit the CCF without content revisions for OMB approval.

The annual total burden estimates for the CCF, the NLCP application, the NLCP information checklist, and the NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate ($)	Total cost ($) [3]
Custody and Control Form: [1]							
Donor	6,726,610	1	6,726,610	0.08	538,129	25	13,453,225
Collector	6,726,610	1	6,726,610	0.07	470,683	15	7,060,245
Laboratory	6,726,610	1	6,726,610	0.05	336,331	35	11,771,585
IITF	1	0	0	0.05	0	35	0
Medical Review Officer	6,726,610	1	6,726,610	0.05	336,331	150	50,449,650
NLCP Application Form: [2]							
Laboratory	10	1	10	3	30	35	1.050
IITF	0	0	0	3	0	35	0
Sections B and C—NLCP Information Checklist:							
Laboratory	24	1	24	1	24	35	840
IITF	1	1	1	1	1	35	35
Record Keeping:							
Laboratory	24	1	24	250	6,000	35	210,000
IITF	0	0	0	250	0	35	0
Total	6,726,669		26,906,499		1,687,529		82,946,625

[1] **Note:** The time it takes each respondent (*i.e.,* donor, collector, laboratory, IITF, and MRO) to complete the Federal CCF is based on an average estimated number of minutes it would take each respondent to complete their designated section of the form or regulated entities (*e.g.,* HHS, DOT, and NRC).

[1] **Note:** The above number of responses is based on an estimate of the total number of specimens collected annually (approximately 150,000 federal agency specimens; 6,500,000 DOT regulated specimens, and 145,000 NRC regulated specimens).

[2] **Note:** The estimate of 10 applications per year is based on requests for a laboratory application (urine or oral fluid) in the past year (*i.e.,* at the time of these calculations) and only 1 IITF application submitted after October 1, 2010.

[2] **Note:** The estimate of three burden hours to complete the application has not changed.

[3] **Note:** At the time of these calculations, there were 20 certified laboratories and one certified IITF undergoing 2 maintenance inspections each year, and 4 applicant laboratories.
[3] **Note:** The wage rates listed for each respondent are based on estimated average hourly wages for the individuals performing these tasks.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, Room 15–E–57–A, 5600 Fishers Lane, Rockville, MD 20857 *OR* email a copy to *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by March 13, 2023.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2023–00197 Filed 1–9–23; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, SAMHSA will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

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

Proposed Project: Request to publish the 60-Day Notices in the **Federal Register** to solicit public comment on information collection for the continued approval and updates for the Protection and Advocacy for Individuals with Mental Illness (PAIMI)—Revised Annual Program Performance Report (PPR)—OMB No. 0930–0169—DECISION.

SAMHSA is requesting approval from the Office of Management and Budget (OMB) for changes to the Annual PPR, PPR Instructions, and the ACR for the PAIMI program. The OMB clearance for the current 2022–2023 PPR, PPR Instructions, and ACR (0930–0169) will expire on 06/30/2023.

The protection and advocacy (P&A) systems were established under the Developmental Disabilities Act of 1975 [42 U.S.C. 15001 *et seq.,* as amended in 2000]. The amendments of 2000 require the Secretary of Health and Human Services submit a biennial report on disabilities to the President, Congress, and the National Council on Disability. The Secretary's report is prepared by the Administration on Intellectual and Developmental Disabilities (AIDD), within the Administration on Community Living. The PPR, which includes an ACR, contains information from the PAIMI grantees on the types of activities and services they provided on behalf of PAIMI-eligible individuals. SAMHSA aggregates this information into a biennial summary report that AIDD includes in an appendix to the Secretary's biennial report on disabilities.

The PAIMI Act at 42 U.S.C. 10805(7) requires that each P&A system prepare and transmit a report to the Secretary HHS and to the head of its state mental health agency on January 1. This report describes the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council (the PAIMI Advisory Council or PAC) that describes the activities of the council and its independent assessment of the operations of the system.

The PAIMI Act at 42 U.S.C. 10801 *et seq.,* authorized funds to the same protection and advocacy (P&A) systems created under the Developmental Disabilities Assistance and Bill of Rights Act of 1975, known as the DD Act (as amended in 2000, 42 U.S.C. 15001 *et seq.*]. The DD Act supports the Protection and Advocacy for Developmental Disabilities (PADD) Program administered by the Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration on Community Living. AIDD is the lead federal P&A agency. The PAIMI Program supports the same governor-designated P&A systems established under the DD Act by providing legal-based individual and systemic advocacy services to individuals with significant (severe) mental illness (adults) and significant (severe) emotional impairment (children/youth) who are at risk for abuse, neglect and other rights violations while residing in a care or treatment facility.

In 2000, the PAIMI Act amendments created a 57th P&A system—the American Indian Consortium (the Navajo and Hopi Tribes in the Four Corners region of the Southwest). The Act, at 42 U.S.C. 10804(d), states that a P&A system may use its allotment to provide representation to individuals with mental illness, as defined by section 42 U.S.C. 10802 (4)(B)(iii), residing in the community, including their own home, *only* if the total allotment under this title for any fiscal year is $30 million or more, *and,* in such cases, an eligible P&A system *must* give priority to representing PAIMI-eligible individuals, as defined by 42 U.S.C. 10802(4)(A) and (B)(i).

The Children's Health Act of 2000 (CHA) also referenced the state P&A system authority to obtain information on incidents of seclusion, restraint, and related deaths [see, CHA, Part H at 42 U.S.C. 290ii–1]. PAIMI Program formula grants awarded by SAMHSA go directly to each of the 57 governor-designated P&A systems. These systems are located in each of the 50 states, the District of Columbia, the American Indian Consortium, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

SAMHSA proposes the following revision to its annual PAIMI Program Performance Report (PPR), PPR Instructions, and ACR:

1. All questions related to Sex/Gender; added the following choices: ''Transgender,'' ''Two-Spirit'' for AI/AN, and ''Other.''

2. All questions related to Age; added the clarification ''would not disclose'' to ''Unknown.''

3. The choice ''A/N I'' (Abuse/Neglect Investigation)was added to the ''Intervention Strategies'' section for clarification.

4. In the ''Death Investigation Activities'' section, the following was added for clarification: ''if zero means the P&A did not receive any death reports from CMS for investigation, please note this in the Footnotes.''

5. In the ''Interventions on behalf of groups of PAIMI-eligible Individuals'' section, ''Group Advocacy,'' the term ''*non-litigation*'' was corrected.

6. Tables and instructions were added to the ''Budget'' section, for clarification.

The current report formats will be effective for the FY 2023 PPR reports due on January 1, 2024.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application will increase to 33,493 hours to account for recording of the additional supplemental funding efforts (approximately 2 hours per state agency).

The annual burden estimate is as follows:

	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Program Performance Report	57	1	20	1,140
Advisory Council Report	57	1	10	570
Total	57	.....	.....	1,710

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *OR* email him a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by March 13, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–00190 Filed 1–9–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2300]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 10, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2300, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each

community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Carroll County, Indiana and Incorporated Areas Project: 12–05–8941S Preliminary Date: September 30, 2022	
City of Delphi	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Unincorporated Areas of Carroll County	Carroll County Area Plan Commission Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Cumberland County, Virginia (All Jurisdictions) Project: 20–03–0026S Preliminary Date: April 14, 2022	
Unincorporated Areas of Cumberland County	Cumberland County Courthouse, Building Inspector's Office, 1 Courthouse Circle, Cumberland, VA 23040.
Goochland County, Virginia (All Jurisdictions) Project: 20–03–0027S Preliminary Dates: May 24, 2022 and August 25, 2022	
Unincorporated Areas of Goochland County	Goochland County Administration Building, 1800 Sandy Hook Road, Goochland, VA 23063.
Hanover County, Virginia and Incorporated Areas Project: 19–03–0021S Preliminary Date: March 24, 2022	
Town of Ashland	Planning and Community Development, Ashland Town Hall, 121 Thompson Street, Ashland, VA 23005.
Unincorporated Areas of Hanover County	Public Works Department, 7516 County Complex Road, Hanover, VA 23069.

[FR Doc. 2023–00193 Filed 1–9–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Security Training for Surface Transportation Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0066, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves information to validate compliance with the regulatory requirements, including Security Training Programs, Security Training Records, Security Coordinator Information, and Reporting Significant Security Concerns Information.

DATES: Send your comments by March 13, 2023.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0066; Security Training for Surface Transportation Employees. TSA was established by the Aviation and Transportation Security Act (ATSA) as the primary federal authority to enhance security for all modes of transportation.[1]

[1] Public Law 107–71, 115 Stat. 597 (Nov. 19, 2001). ATSA created TSA as a component of the Department of Transportation (DOT). Section 403(2) of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), transferred all functions related to transportation

Continued

The scope of TSA's authority includes assessing security risks, developing security measures to address identified risks, and enforcing compliance with these measures.[2] TSA also has broad regulatory authority to issue, rescind, revise, and enforce, regulations as necessary to carry out its transportation security functions.[3]

As part of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act),[4] Congress mandated regulations to enhance surface transportation security through security training of frontline employees. The mandate includes prescriptive requirements for who must be trained, what the training must encompass, and how to submit and obtain approval for a training program.[5] The 9/11 Act also mandates regulations requiring higher-risk railroads and over-the-road buses to appoint security coordinators.[6]

In accordance with these authorities and mandates, TSA published the Security Training for Surface Transportation Employees Final Rule (Rule). *See* 85 FR 16456 (March 23, 2020). This Rule requires owner/operators of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers and over-the-road bus companies to provide TSA-approved security training to employees who perform security-sensitive functions. In addition, TSA expanded its requirements for security coordinators and the reporting of significant security concerns, including bus operations, within the scope of the regulation. *See* 49 CFR parts 1570, 1580, 1582, and 1584.

The information collection mandated by the Rule includes the following:

• *Security Training Program.* Each owner/operator required to have a security training program must submit the program to TSA for approval to ensure that the program meets the required program elements. TSA then reviews the submitted-program, including curriculum, schedule for training, and employees to be trained, to verify that the training program satisfies the regulatory requirements. The curriculum must include training on how to observe, assess and respond to terrorist-related threats and/or incidents. The schedule must address both initial and recurrent training. The scope of the training must include all security-sensitive employees as applicable to the specific modal requirements. If TSA determines the program submitted meets the regulatory requirements, the owner/operator does not need to submit additional programs to TSA unless or until amendments or updates are required. If modifications are required, the owner/operator must re-submit their training program for TSA review and, as necessary, further modifications, until TSA-approval is obtained.

• *Security Training Records.* Each owner/operator is required to maintain security training records for each employee trained for no less than five years from the date of the training. This record retention schedule is necessary to validate compliance with the requirement to provide triennial training.

• *Security Coordinator Information.* Each owner/operator is required to designate and provide to TSA the contact information of a primary and at least one alternate Security Coordinator. This requirement is an expansion of previously imposed requirements applicable to rail operations. As a result, this requirement does not apply to populations currently covered under OMB 1652–0051 (Rail Transportation Security).

• *Reporting Significant Security Concerns Information.* Each owner/operator is required to report potential threats and significant security concerns to TSA within 24 hours of initial discovery. This requirement is an expansion of previously imposed requirements applicable to rail operations. As a result, this information collection does not apply to populations currently covered under OMB 1652–0051 (Rail Transportation Security).

Since the Rule was issued, changes in the industry have resulted in a reduction in the number of regulated persons. As a result, TSA is reducing the estimated number of respondents to the information collection from 289 to approximately 218 respondents, with an annual burden estimate of 4,623 hours (13,869 over three years).

Dated: January 5, 2023.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2023–00288 Filed 1–9–23; 8:45 am]

BILLING CODE 9110–05–P

security, including those of the Secretary of Transportation and the Under Secretary of Transportation for Security, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including the authority in sec. 403(2) of the HSA.

[2] *See* 49 U.S.C. 114, which codified section 101 of ATSA.

[3] 49 U.S.C. 114(l)(1).

[4] Public Law 110–53 (121 Stat. 266; Aug. 3, 2007).

[5] *See* secs. 1408, 1517, and 1534 of the 9/11 Act, codified at 6 U.S.C. 1137, 1167, and 1184, respectively.

[6] *See* secs. 1512 and 1531 of the 9/11 Act, codified at 6 U.S.C. 1162 and 1181, respectively.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–01]

30-Day Notice of Proposed Information Collection: Public Housing Mortgage Program and Section 30; OMB Control No.: 2577–0265

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 9, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 27, 2022 at 87 FR 58525.

A. Overview of Information Collection

Title of Information Collection: Public Housing Mortgage Program and Section 30.

OMB Approval Number: 2577–0265.

Type of Request: Extension of an approved collection.

Form Number: N/A—Because federal regulations have not been adopted for this program, no specific forms are required.

Description of the need for the information and proposed use: Section 516 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105–276, October 21, 1998) added Section 30, Public Housing Mortgages and Security Interest, to the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437z–2). Section 30 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to approve a Housing Authority's (HA) request to mortgage public housing real property or grant a security interest in other tangible forms of personal property if the proceeds of the loan resulting from the mortgage or security interest are used for low-income housing uses. Public Housing Agencies (PHAs) must provide information to HUD for approval to allow PHAs to grant a mortgage in public housing real estate or a security interest in some tangible form of personal property owned by the PHA for the purposes of securing loans or other financing for modernization or development of low-income housing.

Respondents: Members of Affected Public: State, Local or Local Government and Non-profit organization.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2577–0157	30	3	90	41.78	3,760	$157.65	$592,750
Total							

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–00201 Filed 1–9–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6371–D–01]

Order of Succession for the Office of Fair Housing and Equal Opportunity

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Deputy Secretary of the Department of Housing and Urban Development designates the Order of Succession for the Office of the Assistant Secretary for the Office of Fair Housing and Equal Opportunity. This Order of Succession supersedes all prior Orders of Succession for the Office of Fair Housing and Equal Opportunity, including the September 13, 2021, Amendment to the Order of Succession published in the **Federal Register** on November 29, 2011.

APPLICABLE DATE: January 4, 2023.

FOR FURTHER INFORMATION CONTACT: Jaime E. Forero, General Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5106; Washington, DC 20410–6000 or telephone number 202–402–6036 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary for the Office of Fair Housing and Equal Opportunity when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior Orders of Succession for the Office of Fair Housing and Equal Opportunity, including the September 13, 2021, Amendment to the Order of Succession published in the **Federal Register** on November 29, 2011 (76 FR 73984). Accordingly, the Deputy Secretary of HUD designates the following Order of Succession:

Section A. Order of Succession

Subject to the provision of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for the Office of Fair Housing and Equal Opportunity, the following officials within the Office of Fair Housing and Equal Opportunity are hereby designated to exercise the powers and perform the duties of the Office, including the authority to waive regulations:

(1) Principal Deputy Assistant Secretary;

(2) General Deputy Assistant Secretary;

(3) Deputy Assistant Secretary for Enforcement;

(4) Deputy Assistant Secretary for Operations;

(5) Deputy Assistant Secretary for Policy, Legislative Initiatives, and Outreach;

(6) Associate Deputy Assistant Secretary for Enforcement Compliance; and

(7) Executive Director for Field Operations.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precedes theirs in this order, are unable to act by reason of absence, disability, or vacancy in office. No individual who is serving in an office listed in an acting capacity shall, by virtue of so acting, act as Assistant Secretary for the Office of Fair Housing and Equal Opportunity pursuant to this Order.

Section D. Authority Superseded

This Order of Succession supersedes any prior Orders of Succession for the Office of Fair Housing and Equal Opportunity, including the September 13, 2021, Amendment to the Order of Succession published in the **Federal Register** on November 29, 2011 (76 FR 73984).

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Adrianne Todman,

Deputy Secretary of Housing and Urban Development.

[FR Doc. 2023–00188 Filed 1–9–23; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: January 23, 2023, ET. 10:00 a.m.–12:00 p.m.

PLACE: Via Zoom.

STATUS: Meeting of the Board of Directors and Advisory Council, open to the public

MATTERS TO BE CONSIDERED:

- Call to Order and Welcome by Board Chair
- Overview of Meeting Rules by Acting General Counsel
- Approval of minutes from November 15, 2022 meeting
- Introductory Remarks by President and CEO
- Discussion on IAF's Learning Agenda and Fellows relaunch
- Discussion on Board Trip Logistics
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117.

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, (202) 683–7117.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–00318 Filed 1–6–23; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2022–0149; FXES11140800000–223–FF08EVEN0]

Draft Habitat Conservation Plan and Draft Categorical Exclusion for the Santa Barbara County Distinct Population Segment of the California Tiger Salamander; Kelt Reservoir Project, Santa Barbara County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft habitat conservation plan (HCP) and draft categorical exclusion (CatEx) for activities associated with an application for an incidental take permit (ITP) under the Endangered Species Act. The ITP would authorize take of the Santa Barbara County distinct population segment of the California tiger salamander incidental to activities associated with Golden State Water Company's (applicant) Kelt Reservoir Project in Orcutt, Santa Barbara County, California. The applicant developed the draft HCP as part of their application for an ITP. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: Written comments should be received on or before February 9, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R8–ES–2022–0149 at *https://www.regulations.gov,* or you may request copies of the documents by U.S. mail (below) or by email (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Comments: Please send us your written comments using one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2022–0149.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2022–0149; U.S. Fish and Wildlife Service; MS: PRB/3W, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Joseph Brandt, Fish and Wildlife Biologist, by email at *joseph_brandt@fws.gov* or via phone at (805) 677–3324. 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: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan and draft low-effect screening form and environmental action statement for activities associated with an application for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The ITP would authorize take of the Santa Barbara County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) incidental to activities

associated with the construction of two water tanks over a 7.15-acre (ac) project site in Orcutt, Santa Barbara County, California. The project site incorporates a 1.3-mile waterline segment, two water tanks, and an existing staging area. The waterline segment will be constructed within an existing road and will not impact California tiger salamander upland or aquatic habitats. The water tanks will be constructed on 0.68 ac of undeveloped lands that support annual grasslands and coyote brush scrub. The water tank site supports suitable California tiger salamander upland habitat. The applicant developed the draft HCP as part of their application for an ITP. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite comments from the public and Federal, Tribal, State, and local governments on all of these documents.

Background

The Service listed the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, ''take'' is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5)).

Proposed Activities

The applicant has applied for a permit for incidental take of the Santa Barbara County DPS of the California tiger salamander. The take would occur in association with the construction of two water tanks permanently impacting 0.68 ac in Orcutt, Santa Barbara County, California, over a 7.15-acre (ac) project site in Orcutt, Santa Barbara County, California. The project site incorporates a 1.3-mile waterline segment, two water tanks, and an existing staging area. The waterline segment will be constructed within an existing road and will not impact California tiger salamander upland or aquatic habitats. The water tanks will be constructed on 0.68 ac of undeveloped lands that support annual grasslands and coyote brush scrub that supports suitable California tiger salamander upland habitat.

The HCP includes avoidance and minimization measures for the Santa Barbara County DPS of the California tiger salamander and mitigation for unavoidable loss of habitat. As mitigation, the applicant proposes to purchase credits from a Service-approved conservation bank.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2023–00291 Filed 1–9–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Miccosukee Tribe of Indians Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Miccosukee Tribe of Indians Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agriculture, business, and wind and solar leases without further BIA approval.

DATES: BIA issued the approval on December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Miccosukee Tribe of Indians.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR

162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Miccosukee Tribe of Indians.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–00231 Filed 1–9–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOG000000–L18200000–234L1109AF]

Northwest Resource Advisory Council Schedule of Quarterly Public Meetings, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Northwest Resource Advisory Council (RAC) is announcing three public meetings.

DATES: The Northwest Colorado RAC will meet in 2023 as follows:

- The RAC will host a field tour on January 25 and a meeting on January 26.
- The RAC will host a field tour on June 21 and a meeting on June 22.
- The RAC will host a field tour on October 4 and a meeting on October 5.

All field tours will be held from 10 a.m. to 4 p.m. but may conclude earlier depending on the needs of the group. All meetings will be held from 8 a.m. to 3 p.m. All field tours and meetings are open to the public.

ADDRESSES:

- The January 25 field tour will commence at the Grand Junction Field Office, 2815 H Road Grand Junction, CO 81503. Attendees will then travel to McInnis Canyons National Conservation Area. The January 26 meeting will be held at the Grand Junction Field Office.
- The June 21 field tour will commence at the Kremmling Field Office, 2103 E Park Ave., Kremmling, CO 80459. Attendees will then travel to the Upper Colorado River Special Recreation Management Area. The June 22 meeting will be held at the Kremmling Field Office.
- The October 4 field tour will commence at the White River Field Office, 220 E Market St., Meeker, CO 81641. Attendees will travel to the Hunter Fire burn scar. The October 5 meeting will be held at the White River Field Office.

Virtual participation options will also be available for the meeting dates. Registration and participation information will be available on the RAC's web page 30 days in advance of the meetings on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/northwest-rac.*

FOR FURTHER INFORMATION CONTACT: Greg Larson, District Manager; BLM Upper Colorado River District Office, 2815 H Road Street, Grand Junction, Colorado 81506; telephone: 970–244–3000; email: *glarson@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Greg Larson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Northwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Northwest and Upper Colorado River Districts, including the White River, Kremmling, Little Snake, Colorado River Valley, and Grand Junction Field Offices, and the the Dominguez-Escalante and McInnis Canyons National Conservation Areas. The RAC will conduct a field tour on January 25 of past land acquisitions in McInnis Canyons National Conservation Area. The January 26 meeting will focus on land tenure within the RAC's jurisdiction, Gunnison River permits, and field manager updates. The RAC will conduct a field tour on June 21 to the Upper Colorado River Special Recreation Management Area within the Kremmling Field Office. The June 22 meeting will include a review and discussion on river recreation management, grazing, and field manager updates. The RAC will conduct a field tour on October 4 of the Hunt Fire burn scar within the White River Field Office. The October 5 meeting will include a review and discussion of the Hunt Fire, BLM fire management, and field manager updates.

Public comment periods are scheduled for 2:00 p.m. at the January, June, and October meetings. Contingent on the number of people who wish to comment during the public comment period, individual comments may be limited. Written comments received at least 2 weeks prior to the meetings will be provided in advance to RAC members (see **FOR FURTHER INFORATION CONTACT**). Please include ''RAC Comment'' in your submission.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Upper Colorado River District Office at least two weeks in advance of the field tours to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this Notice. Individuals that need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**). The field tours will follow current Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and wearing of masks. Additional information regarding the meetings will be available on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/northwest-rac.*

Detailed minutes for the RAC meetings will be maintained in the Upper Colorado River District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Previous minutes and agendas are also available on the RAC's web page.

(Authority: 43 CFR 1784.4–2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–00301 Filed 1–9–23; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.EE0000. LXSSH1060000.232.HAG 23–0006]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM's) Southeast Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The Southeast Oregon RAC will meet Tuesday, February 28, 2023, from 1 p.m. to 4:30 p.m. A public comment period will be offered at 4 p.m. The RAC will reconvene Wednesday, March 1, 2023, from 8 a.m. to 10:30 a.m. A public comment period will be offered at 9:05 a.m. A virtual participation option will also be offered for both meeting days and participation instructions will be available on the RAC's web page in advance of the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

The RAC will hold a field tour of the Burns BLM Wild Horse Corrals following the March 1 meeting at 10:30 a.m., which is estimated to last for 1 hour depending on the needs of the group. To participate in the tour, please notify RAC coordinator Larisa Bogardus at (541) 219–6863 or *lbogardus@blm.gov* no later than 4:30 p.m. Thursday, Feb. 23, 2022, so arrangements can be made to accommodate the group size. Members of the public are welcome on the field tour but must provide their own transportation and meals.

ADDRESSES: The meeting is open to the public and will be held at the BLM Burns District Office, 28910 US–20, Hines, OR 97738. The field tour will depart from the same location. The final agenda and additional meeting details will be posted at least 10 days in advance of the meeting on the RAC web page: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

Public comments can be mailed to BLM Vale District, Attn: Wayne Monger, 100 Oregon St., Vale, OR 97918 or sent via email to *dmonger@blm.gov.* All comments received will be provided to the Southeast Oregon RAC members.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, OR 97814; (541) 219–6863; *lbogardus@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC is chartered, and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, non-commodity, and local interests. The RAC serves in an advisory capacity to BLM and U.S. Forest Service officials concerning planning and management of public land and national forest resources located, in whole or part, within the boundaries of the BLM's Vale Field Office of the Vale District, Burns District, Lakeview District, and Fremont-Winema and Malheur National Forests. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested before the start of each meeting.

The meeting will include an orientation on travel management planning; updates regarding the Southeast Oregon and Lakeview Resource Management Plan amendment processes; discussion of wild horse and burro herd management; review of recommendations regarding proposed actions by the Burns, Vale, and Lakeview BLM Districts; and any other business that may reasonably come before the RAC. A field tour of the Burns BLM Wild Horse Corrals will be held to familiarize RAC members with the care, conditions, and management of gathered wild horses and burros.

As noted earlier (see **DATES**), the public may address the Southeast Oregon RAC during the public comment portions of the meeting on February 28 and March 1, 2023. Depending on the number of persons wishing to speak, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**).

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

The Designated Federal Officer will attend the meeting, take minutes, and publish these minutes on the RAC's web page at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

(Authority: 43 CFR 1784.4–2)

Darrel W. Monger,

Vale District Manager.

[FR Doc. 2023–00302 Filed 1–9–23; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1349]

Components for Certain Environmentally-Protected LCD Digital Displays and Products Containing Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 5, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Samsung Electronics Co., Ltd. of the Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Research America, Inc. of Mountain View, California; and Samsung International, Inc. of Chula Vista, California. On December 19, 2022, complainants filed a letter supplementing the complaint. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of components for certain environmentally-protected LCD digital displays and products containing same by reason of the infringement of certain claims of U.S. Patent No. 7,948,575 (''the '575 patent''), U.S. Patent No. 8,111,348 (''the '348 patent''), U.S. Patent No. RE45,117 (''the '117 patent''), U.S. Patent No. 8,842,253 (''the '253 patent''), and U.S. Patent No. 8,223,311 (''the '311 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on January 4, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 and 11–13 of the '575 patent; claims 1–3 and 6–9 of the '348 patent; claims 1, 2, and 5 of the '117 patent; claims 1, 10–12, and 16–19 of the '253 patent; and claims 1–4 and 6–13 of the '311 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''environmentally protected digital displays (as well as components thereof such as large format LCDs, including LCD modules, TFT–LCD modules, LCD panels, and LCD monitors) that include certain features such as polarizing filters and/or thermal management cooling paths to assist the display's operation and the viewing experience'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Samsung Electronics Co., Ltd., 129 Samsung ro (Maetan-dong), Yeongtong-gu Suwon-Si, Gyeonggi-do 16677 Republic of Korea

Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660

Samsung Research America, Inc., 665 Clyde Avenue, Mountain View, CA 94043

Samsung International, Inc., 333 H St. Ste. 6000, Chula Vista, CA 91910–5565

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the amended complaint is to be served:

Manufacturing Resources International, Inc., 6415 Shiloh Road East, Alpharetta, GA 30005

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party to this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 4, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00233 Filed 1–9–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1252]

Certain Robotic Floor Cleaning Devices and Components Thereof; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; and Extension of the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 by the accused products of respondents. The Commission requests written submissions from the parties on the issues under review and from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also extended the target date for completion of the investigation to March 6, 2023.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 2, 2021, based on a complaint filed on behalf of iRobot Corporation (''iRobot'') of Bedford, Massachusetts. 86 FR 12206–07 (Mar. 2, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic floor cleaning devices and components thereof based on the infringement of certain claims of U.S. Patent Nos. 9,884,423 (''the '423 patent''); 7,571,511 (''the '511 patent''); 10,813,517 (''the '517 patent''); 10,835,096 (''the '096 patent''); and 10,296,007 (''the '007 patent''). The Commission's notice of investigation named SharkNinja Operating LLC, SharkNinja Management LLC, SharkNinja Management Co., SharkNinja Sales Co., and EP Midco LLC, all of Needham, Massachusetts; and SharkNinja Hong Kong Co. Ltd. of Hong Kong Island, Hong Kong as respondents (collectively, the ''Respondents'' or ''SharkNinja''). The Office of Unfair Import Investigations is not participating in the investigation.

The '007 patent has been terminated from the investigation. *See* Order No. 23 (Sept. 13, 2021), *unreviewed by* Comm'n Notice (Oct. 5, 2021); Order No. 38 (Jan. 4, 2022), *unreviewed by* Comm'n Notice (Jan. 25, 2022). Accordingly, at the ALJ's evidentiary hearing, claims 9, 12, and 23 of the '423 patent; claims 12 and 23 of the '511 patent; claims 1 and 9 of the '517 patent; and claims 17 and 26 of the '096 patent were still pending.

On December 30, 2021, the ALJ issued a *Markman* Order (Order No. 37) construing the terms in dispute for all asserted patents.

On October 7, 2022, the ALJ issued the final ID finding: (1) a violation of section 337 based on infringement (*i.e.,* direct and induced) of asserted claims 9 and 12 of the '423 patent and direct infringement of asserted claims 1 and 9 of the '517 patent; (2) no infringement of claim 23 of the '423 patent; (3) no violation as to claims 17 and 26 of the '096 patent; and (4) no violation as to claims 12 and 23 of the '511 patent. The ID further found that: (1) the second category of SharkNinja's Series 3 redesigned products is not subject to adjudication; (2) iRobot has satisfied the domestic industry requirement with respect to all remaining patents in the investigation; (3) SharkNinja failed to prove, by clear and convincing evidence, that asserted claims 9, 12, and 23 of the '423 patent are invalid under 35 U.S.C. 101, 102, or 103. The ALJ recommended, should the Commission find a violation, issuing a limited exclusion order directed to SharkNinja's infringing products and a cease and

desist order directed to SharkNinja and requiring a bond in the amount of twenty percent (20%) for importation of infringing articles during the period of Presidential review.

On October 24, 2022, SharkNinja and iRobot each petitioned for review of certain aspects of the final ID. On November 1, 2022, SharkNinja and iRobot each filed a response in opposition to each other's petition for review.

On November 16, 2022, SharkNinja filed a motion to submit notice that the U.S. Patent Trial and Appeal Board (''PTAB'') issued a Final Written Decision (''FWD'') (Nov. 14, 2022) finding, *inter alia,* asserted claims 12 and 23 of the '423 patent unpatentable. On November 18, 2022, iRobot filed a response in opposition to the motion. On December 1, 2022, SharkNinja filed a motion to submit information regarding iRobot's failure to appeal a PTAB FWD rendering the asserted claims of the '511 patent unpatentable. The Commission has determined to grant both motions.

The Commission received no public interest comments from the public in response to the Commission's **Federal Register** notice seeking comment on the public interest. 87 FR 62451–52 (Oct. 14, 2022). iRobot submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, and the parties' briefing to the Commission, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ID's findings that: (1) for the '511 patent, estoppel applies to the Trilobite prior art device and claims 1, 10, 12, and 23 are invalid based on the PTAB's finding that the claims are unpatentable; (2) for the '423 patent, (i) claim 9 of the '423 patent is practiced by the domestic industry products; (ii) SharkNinja's accused robots with forward-docking, *i.e.,* the IQ, AI, and AI–WD products, do not infringe claim 23 of the '423 patent; (iii) the prior art Dottie robot does not anticipate claim 23 of the '423 patent; (iv) the prior art combination of Dottie and Everett and the prior art combination of Dottie and Kim do not render claims 12 or 23, respectively, of the '423 patent obvious under 35 U.S.C. 103; (v) iRobot presented insufficient evidence of secondary considerations of non-obviousness with respect to claim 23; and (vi) claim 23 of the '423 patent is directed to patent-eligible subject matter under 35 U.S.C. 101; (3) for the '517 patent, (i) the ''receiving system'' for claims 1 and 9 is not means-plus-function; (ii) claims 1 and 9 are infringed by SharkNinja's accused products; (iii) claims 1 and 9 are practiced by iRobot's domestic industry products; and (iv) claims 1 and 9 are not anticipated by the asserted prior art (Kawakami); and (4) for all remaining asserted patents, *i.e.,* the '511, '423, '517, and '096 patents, iRobot satisfied the economic prong of the domestic industry requirement.

The Commission has determined not to review the remainder of the final ID, including the final ID's finding of no violation as to the '096 patent.

The Commission has also determined to extend the target date for completion of the investigation to March 6, 2023.

In connection with its review, Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. With respect to claim 12 of the '423 patent, assuming that a person of ordinary skill in the art would have been familiar with the interchangeability of sonar and infrared signals, is there evidence in the record (please cite specifically) that suggests that a person of ordinary skill in the art would have been motivated to combine the Dottie robot with the left and right signal docking system disclosed in Everett? Please also include (by citing specifically to the record) any relevant evidence of secondary considerations of non-obviousness with respect to claim 12.

2. If the Commission were to agree with SharkNinja's argument in its petition for review that the ''receiving system'' term of the asserted claims of the '517 patent should be construed as means-plus-function, (i) what would be the function and the corresponding structure (and equivalents thereof) described in the specification, and (ii) what is the impact on infringement, the technical prong of the domestic industry requirement, and invalidity (*i.e.,* anticipation by Kawakami)?

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and is requested to submit proposed remedial orders for the Commission's consideration.

Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on January 18, 2023. Reply submissions must be filed no later than the close of business on January 25, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 30 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1252) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on January 4, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: January 4, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00236 Filed 1–9–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 13, 2023 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–564 and 731–TA–1338–1340 (Review) (Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey). The Commission currently is scheduled to complete and file its determinations and views of the Commission on January 24, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Tyrell Burch, Management Analyst, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 6, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00409 Filed 1–6–23; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1809]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *https://bja.ojp.gov/program/it/global.* This meeting will be held virtually. Approved observers will receive the log-information prior to the meeting.

DATES: The meeting will take place on Wednesday, February 1, 2022, from 3 p.m. to 4 p.m. ET.

ADDRESSES: The meeting will be held virtually via Zoom for Government. Approved observers will receive the login/sign-in information via email prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Lewis, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 616–7829 [note: this is not a toll-free number]; Email: *david.p.lewis@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, however, members of the public who wish to attend this meeting must register with Mr. David P. Lewis at least (7) days in advance of the meeting. Access to the virtual meeting room will not be allowed without prior authorization. All attendees will be required to virtually sign-in via Zoom before they will be admitted to the virtual meeting.

Anyone requiring special accommodations should notify Mr. Lewis at least seven (7) days in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to

facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

David P. Lewis,

Global DFO, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2023–00223 Filed 1–9–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12080]

Proposed Exemption for Certain Prohibited Transaction Restrictions: TT International Asset Management Ltd

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, TT International Asset Management Ltd will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction (defined in Section I(a)), during the Exemption Period (as defined in Section I(c)).

DATES: If granted, the exemption will be in effect for a period of one year, beginning on the date of the Conviction. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by February 13, 2023.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12080 via email to *e-OED@dol.gov* or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mrs. Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the Department's exemption procedures.[1] If the proposed exemption is granted, TT International Asset Management Ltd (TTI) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[2] notwithstanding the

[1] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, TTI is responsible for ensuring compliance with any other laws applicable to the transactions described herein.

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

impending judgment of conviction against its affiliate, Sumitomo Mitsui Banking Corporation Nikko Securities, Inc. (Nikko Tokyo) for attempting to peg, fix or stabilize [3] the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).[4] This proposed exemption would be effective for a one-year period beginning on the date of the Conviction if the exemption's conditions and definitions are satisfied.

This proposed exemption would provide relief from certain restrictions set forth in ERISA Sections 406 and 407. It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, TTI or an affiliate of TTI (as defined in Section VI(d) of PTE 84–14) [5] is convicted of a crime covered by Section I(g) of PTE 84–14 (other than the Conviction as defined in Section I(a)) during the exemption period (as defined in Section I(c)). Although TTI could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination by the plan that it is otherwise prudent to terminate its relationship with TTI.

Summary of Facts and Representations [6]

Background

1. TTI is a global investment firm headquartered in London, UK that currently manages approximately $8.4 billion in assets. TTI and its subsidiaries [7] have operations in the United States, Hong Kong, and Japan. TTI was wholly acquired by Sumitomo Mitsui Financial Group, Inc. (SMFG) on February 28, 2020, and is currently a member of the Sumitomo Mitsui Banking Corporation group (the SMBC Group).[8]

2. The SMBC group is a Japanese financial services firm that conducts activities across a wide range of financial sectors, including banking, asset management, securities trading, leasing, credit card lending, and consumer finance. As currently constituted, SMFG is the group's ultimate parent company. The SMBC group provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC group also conducts securities market activities through the SMBC Nikko Securities franchise. As relevant to this proposed exemption, that includes Nikko Tokyo, a Japanese broker-dealer.

3. TTI is an SEC-registered investment advisor that specializes in managing portfolios for institutional investors, including ERISA-covered Plans (Covered Plans), public retirement plans, and other collective investment vehicles through a variety of equity long-only and long/short strategies across a broad range of industry sectors and geographies.

4. In offering investment management services, TTI operates as a QPAM in reliance on PTE 84–14.[9] TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers [10] and operates three segregated accounts for public pension plans, which currently hold approximately $1.1 billion in assets. TTI also manages three funds as ERISA ''plan asset'' funds: the TT Emerging Markets Opportunities Fund II Limited, the TT Environmental Solutions Equity Master Fund II Limited, and the TT Non-U.S. Equity Master Fund Limited.[11]

ERISA and Code Prohibited Transactions and PTE 84–14

5. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and certain parties in interest with respect to those plans.[12] ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[13] The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[14]

6. Under the authority of ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the

[3] According to the Applicant, the unofficial English-language translation of Article 159, paragraph 3 of the FIEA, available on the Japanese Financial Services Agency website, provides that no person may ''conduct a series of Sales and Purchase of Securities, etc. or make offer, Entrustment, etc. or Accepting an Entrustment, etc. therefore in violation of a Cabinet Order for the purpose of pegging, fixing or stabilizing prices of Listed Financial Instruments, etc. in a Financial Instruments Exchange Market or prices of Over-the-Counter Traded Securities in an Over-the-Counter Securities Market.''

[4] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain crimes.

[5] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[6] The Summary of Facts and Representations is based on TTI's representations provided in its exemption application and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D–12080 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[7] TTI subsidiaries include TT International Investment Management LLP, TT International (Hong Kong) Ltd, TT Crosby Ltd, and TT International Advisors Inc.

[8] The SMBC group is a diversified Japanese financial services firm that conducts activities across a wide range of financial sectors, including banking, asset management, securities trading, leasing, credit card lending, and consumer finance.

[9] Currently, TTI is the only member of the SMBC group that is relying upon the QPAM Exemption. TTI states that it is possible that certain affiliates may seek ERISA business in the future that would require reliance on the QPAM Exemption.

[10] Together, these two ERISA-covered plans currently hold approximately $218 million in assets.

[11] TTI is currently in the process of launching the TT Environmental Solutions Fund; the TT Non-U.S. Equity Fund is operational but does not currently hold any ERISA assets.

[12] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[13] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[14] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

authority to grant an exemption from such ''prohibited transactions'' in accordance with the procedures set forth in its exemption procedure regulation if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of participants and beneficiaries of the plan.[15]

7. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager managing said investment fund satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[16]

8. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the QPAM definition from utilizing the exemptive relief provided by the QPAM exemption for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in Section I(g) within the 10 years immediately preceding a transaction. Section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

Nikko Tokyo Conviction and PTE 84–14 Disqualification

9. On March 24, 2022, the Tokyo District Public Prosecutors Office charged Nikko Tokyo and four of its officers and employees in Tokyo District Court with alleged violations of Japan's Financial Instruments and Exchange Act (the FIEA) for allegedly attempting to peg, fix, or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Misconduct). Specifically, a block offering is a type of limited public offering that is common in Japan, whereby a dealer typically applies a spread to the price at which it purchased the shares from the seller and the price at which it sells them in the block offering.

10. In connection with the March 24, 2022 charges, the Tokyo Public Prosecutor alleged that between December 2019 and November 2020, Nikko Tokyo, through the actions of relevant officers, purchased shares of five issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.[17]

11. On April 13, 2022, the Tokyo Public Prosecutor filed additional charges against Nikko Tokyo and two officers and employees of Nikko Tokyo for engaging in similar conduct in connection with five additional block offers between October 2020 and April 2021.[18] The March 24, 2022, and April 13, 2022 charges against Nikko Tokyo have been consolidated for purposes of the Tokyo District Court proceeding.

12. The trial in Tokyo District Court occurred over three days on October 28, 2022, December 1, 2022, and December 26, 2022. TTI represents that the Tokyo District Court is expected to issue a final decision on February 13, 2023. TTI also states that under Japanese law, conviction and judgment occur simultaneously.

Nikko Tokyo Affiliation and Loss of QPAM Status

13. Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for the purposes of Section I(g) of the QPAM Exemption. Once the Tokyo District Court issues its final decision and Nikko Tokyo is sentenced in connection with its Conviction, Section I(g) will be triggered and TTI, as well as its Covered Plan clients, will be ineligible to rely on the QPAM Exemption, without receiving an individual prohibited transaction exemption from the Department.

Exemption Request

14. On October 19, 2022, TTI submitted an exemption request to the Department that would permit TTI and its Covered Plan clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Conviction of Nikko Tokyo. In support of its exemption request, TTI asserts that Nikko Tokyo is a remote foreign affiliate of TTI with wholly separate businesses, operations, management, systems, premises, and legal and compliance personnel; that TTI was not involved in any way in the Misconduct; and that the Misconduct did not involve any ERISA assets.

Separation of TTI and Nikko Tokyo

15. TTI states that none of the Misconduct underlying the anticipated Nikko Tokyo Conviction involved TTI or the SMBC group's asset management businesses. Further, it states that none of TTI's personnel was involved in the misconduct and none of the individual officers or employees of Nikko Tokyo had any role at TTI. According to the Applicant, TTI and Nikko Tokyo have separate businesses, operations, management teams, systems, premises, and legal and compliance personnel. Since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks. Further, TTI is not directly owned by or in the same vertical ownership chain as Nikko Tokyo, and TTI and Nikko Tokyo do not share personnel or office space.

16. The Applicant acknowledges that TTI's seven-member board of directors includes four representatives from the SMBC group, but additionally represents that TTI's Management Committee provides direct oversight of the business.[19] The Applicant states that the SMBC group exercises oversight through representation on TTI's board of directors and management committee and TTI receives the benefit of an internal audit back-office function provided by the SMBC group. According to the Applicant, however, TTI personnel remain fully and independently responsible for TTI's material functions, including portfolio and risk management activities, investment and trading decisions, compliance, marketing, and the provision of client services. In addition, dedicated TTI personnel perform all day-to-day functions related to TTI's business as an investment adviser, including onboarding customers,

[15] The Department's exemption procedure regulation is codified at 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[16] See 75 FR 38837, 38839 (July 6, 2010).

[17] The Tokyo Public Prosecutor alleged that these ''stabilization transactions'' violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

[18] Charges were filed under Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

[19] The board of directors is responsible for, among other things, setting strategic objectives, approving major initiatives, and ensuring the company has adopted and implemented a compliance infrastructure that is reasonably designed to meet its regulatory obligations.

managing customer accounts, and executing trading decisions.

17. TTI's Management Committee, which includes TTI's Managing Director, Chief Financial Officer, three other TTI executives, and a single representative from the SMBC group, provides direct oversight of the business, including ensuring that TTI implements the strategy set by the board. Day-to-day management at TTI is conducted by a dedicated management team with support from other TTI committees, including the Operations Committee, Product Committee, Valuation Committee, and ESG Committee. The Applicant submits that TTI has retained its investment autonomy and does not rely on SMBC group personnel for any material functions. In addition, TTI has dedicated independent legal, risk, and compliance teams, as well as its own control framework and compliance infrastructure.[20]

18. TTI has detailed policies setting forth its process for handling ERISA assets, identifying and addressing conflicts of interest, best execution, and compliance with applicable anti-money laundering requirements. TTI also has a dedicated Compliance Manual that sets forth, among other things, firm policies related to whistleblowing, handling internal and external complaints, client onboarding, and the process for approving new products or instruments.

19. In addition to its own compliance and governance frameworks, TTI is subject to groupwide oversight as part of the SMBC group. Specifically, TTI's U.S. office and U.S. subsidiary are subject to oversight as part of SMBC group's combined U.S. operations, including by the U.S. Risk Committee. According to the Applicant, this ensures that TTI adheres to the SMBC group's global and regional policies and compliance expectations and provides a mechanism for escalating potential issues to the U.S. chief risk officer or other oversight functions as appropriate.

20. Besides common ownership, the sole connection between TTI and Nikko Tokyo is Hideyuki Fred Omokawa, an SMBC group representative on TTI's board of directors and Management Committee who was appointed as Nikko Tokyo's Managing Executive Officer of Business Strategy and Development on April 1, 2021. The Applicant states that Mr. Omokawa was not involved in any of the Misconduct.

21. TTI states that Nikko Tokyo is not a QPAM, does not manage any ERISA assets, and that no ERISA assets were involved in the Misconduct underlying the anticipated Nikko Tokyo Conviction.

22. Finally, TTI represents that it has not engaged in trading activity with Nikko Tokyo on behalf of ERISA accounts at any point since TTI became affiliated with Nikko Tokyo.

Hardship to Covered Plans

The Applicant represents that Covered Plans would suffer certain hardships if the Applicant loses its eligibility to rely on the QPAM Exemption. The Applicant's representations regarding these hardships are set forth below in paragraphs 23 through 37.

23. TTI represents that if the Department declines to grant this proposed exemption, there would be adverse consequences for Covered Plans and public plans. In this regard, loss of the QPAM Exemption would severely limit the investment transactions available to the accounts that TTI manages on behalf of Covered Plans, hindering TTI's ability to efficiently manage the strategies for which TTI contracted with Covered Plan clients. Further, if TTI were not QPAM Exemption eligible, it could receive less advantageous pricing and certain counterparties could, as a blanket policy, refuse to transact with or provide services to TTI.

24. TTI states that it has extensively reviewed its investment activity and concluded that, as a practical matter, the QPAM Exemption is the only exemption available to provide relief. TTI states that counterparties to the swaps and other transactions in which TTI-managed accounts engage require compliance with, and a representation as to satisfaction of the conditions of, the QPAM Exemption. In light of market reliance on QPAM Exemption, the Applicant submits that it would not be possible for TTI to effectively manage its strategies for ERISA clients, absent the grant of exemptive relief.

The Applicant states that, particularly given the nature of emerging market investments and swap, options, and other derivative transactions, there is discomfort and reluctance on both the part of Covered Plan clients and counterparties to utilize more recent alternative exemptions, such as the service provider exemption under ERISA section 408(b)(17), due to uncertainty about the application of the adequate consideration requirements and the resulting possibility that the use of the exemption is later challenged on those grounds.

25. TTI states that it relies on the QPAM Exemption to conduct a variety of transactions on behalf of Covered Plans, including buying and selling equity securities; preferred stock; American Depository Receipts, and related options; U.S. and foreign fixed-income instruments, including unregistered offerings; various derivatives, including futures, options on futures, and swaps; and foreign exchange products, including spot currencies, forwards, and swaps. TTI also relies upon the QPAM Exemption for the purchase and sale of both foreign and domestic equity securities, registered and sold under Rule 144A or otherwise (*e.g.,* traditional private placement).

TTI specializes in international and emerging market strategies and these strategies depend on TTI's ability to translate and maintain the value of Covered Plan investments from the local currency in which the investment is made into U.S. dollars, the benchmark currency in which the Covered Plan's performance is measured. This creates inherent currency risks. To limit the plans' risk exposure to the underlying securities without simultaneously exposing them to the risk of currency fluctuation, TTI makes substantial use of foreign exchange (FX) hedges by using forward transactions and other FX derivatives. If the Department does not grant this proposed exemption, nearly $2.07 billion in ERISA plans and separately managed accounts for private and public employers would likely be affected, either directly or as a result of TTI's inability to effectively hedge risk.

26. For all but one of the ERISA funds that TTI manages, virtually all assets are either actively or dynamically hedged based on exposures and market conditions.[21] As of November 3, 2022, approximately 16% of the assets under management (AUM) in each of the four segregated ERISA accounts that TTI manages on behalf of the ERISA plans of two major U.S. employers is hedged with respect to Indian, Taiwanese, and Chinese currency, which translates to approximately $35 million in hedges. Further, the TT Emerging Markets Opportunities Fund II has over the past year hedged risks associated with British, Indian, Taiwanese, Chinese, Mexican, and Polish currencies. Without these positions, the TT Emerging Markets Opportunities Fund II would have incurred nearly $5.5 million

[20] This includes TTI's Code of Ethics, which sets forth TTI's expectation that all personnel will ''[o]bserve the highest standards of integrity'' and ensure that TTI maintains its ''strong reputation for regulatory compliance and high professional standards.'' This Code of Ethics also addresses prohibitions on market abuse and restrictions on personal trading.

[21] The actual percentage of AUM in each fund that is hedged at any given time varies.

in losses due to unhedged FX exposures, negatively impacting overall returns.

27. According to the Applicant, TTI's ability to deliver returns depends on its ability to limit its customers' exposure to defined risks, such as international and emerging market equity risk, without introducing additional risk factors such as FX volatility. If TTI loses its ability to rely upon the QPAM Exemption, it would no longer be able to hedge currency for its private and public plan asset clients, preventing it from managing absolute and relative currency risk for such clients in such clients' best interests.

28. Loss of the QPAM Exemption would also impact TTI's agreements with the swap dealers it executes these hedges with pursuant to International Swaps and Derivatives Association Agreements (ISDA Agreements). ISDA agreements require TTI to represent that it meets all conditions of the QPAM Exemption, and a breach of this representation would entitle the counterparty to terminate the transaction. The Applicant states that, as a practical matter, swap dealers would be nearly certain to exercise their right to terminate because TTI's loss of the QPAM Exemption would increase the swap dealers' exposure to risk. Thus, these agreements would be unwound and TTI would no longer be able to employ the hedging activities on which its strategies depend. If these ISDA Agreements were terminated, TTI stats that it would immediately need to unwind approximately $330 million in hedges.[22]

29. TTI submits that if this proposed exemption is not granted, Covered Plans could incur significant costs, including transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. TTI states that it has longstanding relationships with its ERISA plan clients and if this exemption were denied, these plans would need to undertake significant work to find an alternative manager.[23] These costs, according to the Applicant include the following: (a) consultant fees, legal fees, and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.

30. The Applicant states that, given the sophistication of TTI's investment strategies, Covered Plan clients would likely engage in a full RFP process which could take several months to complete. TTI represents that it is considered a leader in emerging markets strategies, and that Covered Plans would have a difficult time finding a suitable replacement. TTI states that plans generally incur tens of thousands of dollars in consulting and legal fees in connection with a search for a new manager and that consultants may charge more for searches involving specialized strategies, such as TTI's international, emerging markets, and environmentally conscious portfolios.

31. The Applicant states that terminating management agreements and liquidating associated positions can have a significant impact on both transaction fees and the market value of the underlying assets. This is particularly true for many of TTI's strategies, which focus on international and emerging markets and may occasionally involve investments in illiquid foreign securities and related derivatives that have large bid-ask spreads, infrequent trading, and/or low trading volumes.

32. TTI states that for U.S. Equity Strategies, assuming average market conditions, the liquidation costs over a 30-day liquidation timeframe might range from 20 to 40 basis points; for significantly shorter liquidation periods, and depending on the strategy, the range could be 30 to 50 basis points. In addition, commission fees and transactions would likely average an additional 4 basis points.

33. For International and Emerging Markets Equity, TTI relies on the QPAM Exemption to buy and sell certain international and emerging markets equity securities. International, and particularly emerging, equity markets are typically less liquid than their domestic counterparts and incur higher transaction costs. Assuming average market conditions, the liquidation costs for equity strategies over a 30-day liquidation timeframe might range from 30 to 50 basis points; for significantly shorter liquidation periods, the range could be 40 to 80 basis points, depending on the strategy. In addition, there would also be an additional average of 10 basis points in commission fees on the transactions.

34. For futures, options, and cleared and bilateral swaps, TTI relies on the QPAM Exemption to buy and sell these products, which certain strategies rely on to hedge risk and obtain certain exposures on an economic basis. TTI states that these investments are important to plans and commingled funds both as an ongoing risk management matter and to hedge various risks. Without the ability to invest in these instruments, plans would no longer have access to a tool that managers routinely use to protect against losses caused by market volatility. If the QPAM Exemption were lost, TTI estimates that its clients could incur average weighted liquidation costs of approximately 5 basis points of the total market value of these products.

35. In the case of foreign currency exposure, Plans that invest in global strategies would be disadvantaged were they to lose the ability to hedge currency risk. If the QPAM Exemption were lost, TTI estimates that its clients could incur average weighted liquidation costs of approximately 5 basis points of the total market value in fixed income products.

Steps Taken To Protect Covered Plans

36. After becoming aware of Nikko Tokyo's indictment, TTI states that it took immediate steps to prevent the trading of all TTI managed accounts with or through Nikko Tokyo. Further, TTI inventoried the ISDAs to which it is a party and reached out to counsel to begin exploring alternative exemptions, none of which were practically available to TTI (both as a contractual matter and as a substantive matter given the nature and extent of the hedging activities employed in the strategies).[24] TTI further states that it has not onboarded any new ERISA clients since becoming aware of Nikko Tokyo's indictment.

37. With respect to existing clients, TTI's options are limited. Because TTI cannot execute its foreign investment strategies consistent with Covered Plans' investment goals absent the QPAM Exemption, TTI states that it is unable to adequately protect Covered Plans from loss of the QPAM Exemption beyond assisting the funds in

[22] The approximate total FX forward exposure of TTI's public and private plan asset accounts as of November 10, 2022 is $330 million.

[23] TTI represents that it has managed ERISA assets for a major U.S. financial institution since at least 2015. TTI also states that it has managed ERISA assets for a large aerospace company since at least 2018.

[24] TTI represents that, given the nature of emerging market investments and swap, options, and other derivative transactions, there is discomfort and reluctance on both the part of ERISA clients and counterparties to utilize more recent alternative exemptions, such as the service provider exemption under ERISA Section 408(b)(17), due to uncertainty about the application of the adequate consideration requirements and the resulting possibility that the use of the exemption is later challenged on those grounds.

identifying potential alternative QPAMs.

Protective Conditions

38. In its exemption application, TTI requested a five-year exemption for TTI and its current and future affiliates and related entities. However, given the short time between now and the Conviction date and the lack of a record necessary to determine that TTI's full request would be in the interest of, and protective of, all affected Covered Plans, the Department has determined to propose this one-year exemption solely for TTI. With the limited term of relief, the Department reserves the right to review TTI's adherence to the conditions set out in this exemption before granting a longer term of relief.

39. In developing administrative exemptions under ERISA Section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective and in the interest of affected plans and IRAs. The Department is proposing this exemption with conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of TTI if they determine that it is prudent to do so. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid costs and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI no longer is able to rely on the relief provided by PTE 84–14 due to the Conviction.

40. This proposed exemption requires TTI to develop, implement, maintain, and follow written policies (the Policies) that are reasonably designed to ensure that, among other things: (a) the asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo; (b) TTI fully complies with ERISA's fiduciary duties; (c) any filings or statements made by TTI to regulators on behalf of Covered Plans are materially accurate and complete; and (d) TTI complies with the terms of this proposed exemption. Further, any violation of or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure that is not promptly corrected must be reported, in writing to appropriate corporate officers upon the discovery of the failure to promptly correct.

41. This proposed exemption requires TTI to develop and implement a training program (the Training) that is conducted by a prudently selected independent professional. The Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this proposed exemption, and the duty to promptly report wrongdoing.

42. This proposed exemption further requires TTI to be audited for the 12-month exemption period by a prudently selected independent auditor (the Auditor). The Auditor must evaluate the adequacy of TTI's implementation and compliance with the Policies and Training requirements of this proposed exemption. The Auditor must also issue a written report (the Audit Report) to TTI that describes the procedures it performed during the Audit. In its Audit Report, the Auditor must further assess the adequacy of the Policies and Training, TTI's compliance with the Policies and Training, the need, if any, to strengthen the Policies and Training; and any instance(s) of noncompliance by TTI.

43. This proposed exemption also requires that certain TTI senior personnel must review the Audit Report, make certain certifications, and take corrective actions when necessary. In this regard, a general counsel, or one of the three most senior executive officers of TTI must certify in writing and under penalty of perjury that the officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report, and determined that the Policies and Training comply with the requirements of this proposed exemption and applicable provisions of ERISA and the Code.

44. This proposed exemption requires TTI to agree and warrant to their Covered Plan clients that they will: (a) comply with ERISA and the Code; (b) refrain from engaging in prohibited transactions that are not otherwise exempt (and promptly correct any inadvertent prohibited transactions); and (c) comply with the standards of prudence and loyalty set forth in ERISA Section 404. This proposed exemption also requires TTI to agree and warrant: (a) to indemnify and hold harmless Covered Plans for certain damages; and (b) not to require (or otherwise cause) Covered Plans to waive, limit, or qualify the liability of TTI for violating ERISA or the Code or engaging in prohibited transactions. Finally, this proposed exemption requires TTI to agree and warrant not to: (a) restrict the ability of Covered Plans to terminate or withdraw from their arrangement with TTI except for reasonable restrictions disclosed in advance, as defined in this proposed exemption; or (b) impose any fees, penalties, or charges for such termination or withdrawal, except for reasonable fees.

45. This proposed exemption contains extensive notice requirements that obligate TTI to provide Covered Plans with a notice of the TTI's obligations under the exemption, a copy of the notice of the exemption as published in the **Federal Register**, a separate summary describing the facts that led to the Conviction (the Summary), and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14.

46. This proposed exemption also requires TTI to designate a senior compliance officer (the Compliance Officer) to conduct a twelve-month review to determine the adequacy and effectiveness of the implementation of the Policies and Training (the Review). The Compliance Officer must prepare a written report for the Review that, among other things, summarizes their material activities during the preceding year, sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action taken.

47. Finally, the Department notes that relief under this proposed exemption is limited solely to TTI and no other affiliates of TTI, SMBC or SMFG, as the term affiliate is defined in PTE 84–14. Further, this proposed exemption will only apply for a limited period of one year. To continue to rely upon the QPAM Exemption beyond the one-year term of the exemption, TTI will have to submit another exemption application to the Department.

Statutory Findings

48. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by TTI would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

49. *The Proposed Exemption is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering TTI's compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and be made available to the public. The Department notes that the independent audit will incentivize compliance while reducing the immediate need for direct review and oversight by the Department.

50. *The Proposed Exemption is* ''*In the Interest of the Covered Plans.*'' The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from TTI, that if the requested exemption is denied, Covered Plans may be forced to find other managers at a potentially significant cost. According to TTI, ineligibility under the QPAM Exemption would deprive Covered Plans of the investment management services that they expected to receive when they appointed TTI. In this regard, an exemption denial could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

51. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions that include, but are not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of TTI; (e) specific notices and disclosures that inform Covered Plans of the circumstances necessitating the need for exemptive relief and TTI's obligations under this exemption; and (f) the designation of a Compliance Officer who must ensure TTI continues to comply with the Policies and Training requirements of this exemption.

Summary

52. This proposed exemption would provide relief from certain of the restrictions set forth in ERISA Section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law would be provided by this proposed exemption. The relief set forth in this proposed exemption would terminate immediately if, among other things, an entity within the TTI corporate structure were convicted of any crime covered by Section I(g) of PTE 84–14 (other than the Conviction). While such an entity could request a new individual prohibited transaction exemption in that event, the Department is not obligated to grant such a request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA Section 408(a) and Code Section 4975(c)(2).

53. When interpreting and implementing this exemption, TTI should resolve any ambiguities in favor of the exemption's protective purposes. To the extent additional clarification is necessary, TTI and others should contact EBSA's Office of Exemption Determinations at 202–693–8540.

54. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by TTI would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within three (3) days of the publication of the notice of proposed one-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within thirty-three (33) days of the date of publication of this proposed one-year exemption in the **Federal Register**. All comments will be made available to the public.

Warning

If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

(5) The Department notes that all of the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times, and that the relief provided herein is conditioned upon the veracity of all material representations made by the Applicant.

Proposed Exemption

The Department is considering granting a one-year exemption under the authority of ERISA Section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in the exemption procedure regulation.[25]

[25] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that is expected to occur on February 13, 2023.

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''Exemption Period'' means the one-year period beginning on the date of the Conviction.

(d) The term ''TTI'' means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo).

Section II. Covered Transactions

Under this proposed exemption, TTI would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period, provided that the conditions set forth in in Section III below are satisfied.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this proposed exemption, ''participate in'' refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, TTI will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by TTI in reliance on PTE 84–14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of TTI to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause TTI or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Nikko Tokyo will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

(h)(1) TTI must develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) TTI does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by TTI to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of TTI's knowledge at the time, TTI does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the TTI reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) TTI must implement a training program (the Training) during the

of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (b) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) TTI must submit to an audit by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The audit must cover the entire Exemption Period.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test TTI's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for TTI, transactions involving Covered Plans sufficient in size, number, and nature to afford the auditor a reasonable basis to determine TTI's operational compliance with the Policies and Training;

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Review described in Section III(m);

(6) The auditor must notify TTI of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) TTI must provide its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) TTI and the auditor must submit to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit for inspection and review, provided such access and

inspection is otherwise permitted by law; and

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from TTI's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by TTI; or any claim arising out of the failure of TTI to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by TTI's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 because of TTI's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of TTI for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of TTI for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of TTI and its affiliates, or damages arising from acts outside the control of TTI; and

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with TTI. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from TTI. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If an entity within TTI's corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, TTI must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of TTI's compliance with and

effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of TTI; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of TTI;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) TTI complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) Nikko Tokyo complies in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which TTI relies upon the relief in this exemption;

(q) During the Exemption Period, TTI must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by TTI or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, TTI, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of TTI's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If TTI meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective date: If granted, the exemption will be in effect for a period of one year, beginning on the date of the Conviction.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–00341 Filed 1–9–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–01; Exemption Application No. D–12064]

Exemption From Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption allows entities with specified relationships to JPMorgan Chase Co. (JPMC or the Applicant), located in New York, N.Y., to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC, as described below.

DATES: The exemption is effective for a period of four years, beginning on January 10, 2023, and ending on January 9, 2027.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 20, 2022, the Department published a notice of proposed exemption in the **Federal Register** at 87 FR 63802 that would permit certain qualified professional asset managers (QPAMs) within the corporate family of JPMC to continue relying on the class exemptive relief provided under PTE 84–14 [1] for a period of four years notwithstanding the judgment of conviction against JPMC, as described below. The Department is granting this exemption to ensure that the

[1] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

participants and beneficiaries of ERISA-covered Plans and IRAs managed by JPMC affiliates (together, Covered Plans) are protected.

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by the JPMC QPAMs to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with a JPMC QPAM in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on the Applicant's adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

1. JPMC is the parent company of investment management affiliates that rely upon the class exemptive relief provided under the QPAM Exemption to manage the assets of Covered Plans (The JPMC Affiliated QPAMs). In addition to the JPMC Affiliated QPAMs, JPMC currently owns a 5% or greater direct or indirect interest in certain investment managers that also rely upon the QPAM Exemption but are not affiliated with JPMC in the sense of having common control (the JPMC Related QPAMs).[2]

2. The QPAM Exemption exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of the QPAM Exemption) in which a plan has an interest if the investment manager with discretion over the investment of plan assets satisfies the definition of ''qualified professional asset manager'' and satisfies additional conditions of the exemption. The QPAM Exemption was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[3]

3. Section I(g) of the QPAM Exemption prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided, for itself and its client plans, if that entity, an ''affiliate'' thereof,[4] or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in section I(g) within the 10 years immediately preceding the transaction. Section I(g) was included in the QPAM Exemption, in part, based on the Department's expectation that a QPAM, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

4. On May 20, 2015, the Department of Justice filed a Criminal Information in the U.S. District Court for the District of Connecticut (the District Court) [5] charging JPMC with a one-count violation of the Sherman Antitrust Act.[6] The Information charged that as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the foreign exchange spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct involved near-daily conversations, some of which were conducted in code, in an exclusive electronic chat room. On May 20, 2015, JPMC agreed to enter a guilty plea to the charge set out in the Information (the Plea Agreement). The District Court subsequently entered a judgment of Conviction against JPMC on January 10, 2017.

5. Once the District Court entered the Conviction, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their Covered Plan clients, became ineligible to rely on the QPAM Exemption (due to the Section I(g) disqualification provision) without receiving an individual prohibited transaction exemption from the Department.

6. On December 22, 2016, the Department granted PTE 2016–15 which permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided in the QPAM exemption for a period of one year, from January 10, 2017 through January 9, 2018.[7] Subsequently, on December 29, 2017, the Department granted PTE 2017–03, a second individual exemption that permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided by the QPAM Exemption for a period of five years, from January 10, 2018 through January 9, 2023.[8] PTEs 2016–15 and 2017–03 each contain a set of conditions that are designed to protect those Covered Plans that entrust their assets to a JPMC QPAM despite the serious nature of the Criminal Misconduct underlying the Conviction.

7. With PTEs 2016–15 and 2017–03, the Department decided to grant limited terms of relief despite the Applicant's request for an exemption that would cover the entire 10-year ineligibility period triggered by Section I(g). With the limited terms of relief, the Department reserved the right to review the JPMC QPAMs' adherence to the conditions set out in those exemptions.

8. On October 1, 2021, the Applicant filed an application for exemptive relief

[2] Since the Department granted PTE 2017–03, the following seven JPMC QPAMs have exercised discretionary control over the management and disposition of client assets held by ERISA-covered Plans and IRAs (together, Covered Plans): JPMorgan Chase Bank, N.A., J.P. Morgan Alternative Asset Management, Inc., JPMorgan Asset Management (Asia Pacific) Limited, J.P. Morgan Investment Management Inc., J.P. Morgan Private Investments Inc., J.P. Morgan Securities LLC., and Security Capital Research & Management Incorporated.

[3] See 75 FR 38837, 38839 (July 6, 2010).

[4] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[5] Case Number 3:15–CR–79–SRU.

[6] 15 U.S.C. 1.

[7] PTE 2016–15, 81 FR 94028 (December 22, 2016). PTE 2016–15 became effective on January 10, 2017 (the date on which the District Court.

[8] PTE 2017–03, 82 FR 61816 (December 29, 2017).

that would permit the JPMC QPAMs to continue to rely upon the QPAM Exemption for a period of four years from January 10, 2023 (the expiration of PTE 2017–03), through January 9, 2027 (the conclusion of the Section I(g) 10-year ineligibility period). On February 7, 2022, the Applicant supplemented its application with the most recent audit report, as required under PTE 2017–03.

9. In support of its request to extend exemptive relief through the end of the disqualification period, the Applicant submits that the JPMC Affiliated QPAMs and the JPMC Related QPAMs have complied with all of the conditions of PTE 2017–03 and, therefore, should be permitted to continue to rely upon the QPAM Exemption in order to avoid substantial costs and other disruptions to Covered Plans that would otherwise occur in the absence of relief.

10. In the proposed exemption the Department discussed in greater detail the suite of conditions imposed by PTE 2017–03 and the JPMC QPAMs' compliance with each of those conditions. In the proposed exemption the Department also discussed the Applicant's representations regarding the potential for adverse consequences for Covered Plans if this exemption is not granted.

11. The Department encourages anyone reading this grant notice to consult the proposed exemption for a more complete discussion of all material facts underlying the Applicant's exemption request and the Department's decision to proceed with this grant notice.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by December 19, 2022. The Department received four written comments and no hearing requests. Two written comments were received from the Applicant and two written comments were received from other interested persons. The comments are discussed in more detail below.

Comments From the Applicant

Comment 1: Certification of Audit Report

Section III(i)(7) of the proposed exemption requires a general counsel or senior executive at the JPMC Affiliated QPAMs to make certain certifications with respect to the audit report. Section III(i)(7), in pertinent part, states:

''*Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.*''

The Applicant requests the Department to modify the language of Section III(i)(7) to make it consistent with PTE 2017–03 so that participation and knowledge relate to the misconduct that was the subject of the Conviction. The Applicant states that, while the plea agreement was not limited to a description of criminal conduct, only the foreign exchange antitrust violations were deemed criminal by the Department of Justice (DOJ). The Applicant requests that the final sentence of the condition be limited to ''conduct underlying the Conviction.''

In addition, the Applicant notes that the reference to a Statement of Facts in Section III(i)(7) is unclear and should be removed, because there is no section entitled Statement of Facts in either the plea agreement or the information. Accordingly, the Applicant requests that Section III(i)(7), in pertinent part, be modified to read:

''. . . Notwithstanding the above, no person, including any person referenced in the plea agreement that gave rise to the Conviction, who knew of, or should have known of, or participated in, the misconduct underlying the Conviction may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct.''

Department's Response: The Department agrees with the Applicant's requests in part and disagrees in part. The Department declines to make the Applicant's requested change to Section III(i)(7). The officer tasked with reviewing the audit report and certifying that the JPMC Affiliated QPAMs have remedied any instance of noncompliance with the Policies and Training should not have knowingly participated in the misconduct identified by the DOJ. This includes the misconduct directly underlying the Conviction and also the tertiary misconduct cited by DOJ. The Department agrees, however, with the Applicant's request to strike the reference to ''Statement of Facts.''

Comment 2: Indemnification

Section III(j)(2) of the proposed exemption provides: *Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM agrees and warrants: (2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.*

The Applicant requests the Department to delete the expanded discussion of ''actual losses'' at the end of Section III(j)(2). The Applicant states that, although the Department uses the same definition, in different circumstances, in the recently published Proposed Amendment to Prohibited Transaction Class Exemption 84–14, several commenters asserted that this definition was too expansive, goes far beyond any transaction reliant on the QPAM Exemption, appears punitive with respect to the investment manager, and would represent a windfall to plan clients. If the convicted entity is the asset manager and it is no longer allowed to manage plan assets, the Applicant states that plans may well believe that the criminal conduct of their manager militates in favor of terminating the arrangement. The Applicant states that where the asset manager is not only not the convicted entity, but did not know of, have reason to know of, or participate in that conduct, the exemption effectively forces plans to terminate their arrangements, if only to have their market losses covered. According to the Applicant, it seems patently unfair to apply this definition only to the Applicant, in advance of a change in the rule applicable to all managers.

The Applicant further submits that for many JPMC Affiliated QPAMs who use the QPAM Exemption only occasionally or not at all for a particular account or strategy, there is no reason for the JPMC Affiliated QPAMs to be required to

indemnify a plan for losses with respect to transactions that never relied on the QPAM Exemption. Nor should the JPMC Affiliated QPAMs be required to indemnify for a new manager search when under the provisions of ERISA, the plan is not required to terminate its arrangement with the JPMC Affiliated QPAM.[9]

The Applicant states that the potential liability exposure associated with the broad and vague indemnification requirements is extensive and ambiguous and it is not commercially reasonable to include indemnity provisions of this magnitude. According to the Applicant, this new burden will likely impact the fees and expenses managers charge plans for their services due to, among other things, higher compliance and liability insurance costs. The Applicant states that imposing new and distinct penalties for loss of eligibility for one specific exemption when that exemption may not have been used at all for the transaction at issue is arbitrary and unwarranted.

Department's Response: The Department declines to make the requested change. The Department views the new language as a clarification of the term ''actual losses'' as contemplated by Section III(j)(2). In the event a JPMC Affiliated QPAM is no longer able to rely on the QPAM Exemption, Section III(j)(2) allows Covered Plans to prudently manage their plans without needing to consider the costs caused by the QPAM's own violations, including costs resulting from unwinding transactions and transitioning plan assets to a new manager (as these costs will be borne by the QPAM and not the Covered Plan).

In the Department's view, it is important that plans have the option to take their business elsewhere when parties fail to meet the conditions of the exemption and should not be locked into disadvantageous relationships based on the cost of unwinding transactions—a cost that would not have been incurred if there had been full compliance with the exemption. In addition, the Department notes that nothing in this exemption prevents the JPMC Affiliated QPAMs from entering into indemnification arrangements with affiliates to manage circumstances where an affiliate causes the loss of another affiliate's QPAM status.

Comment 3: Entities in Corporate Structure

Section III(l) of the proposed exemption states: *The JPMC Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately.*

The Applicant submits that the language, ''an entity within the JPMC corporate structure,'' was intended to mean an affiliate of the JPMC Affiliated QPAMs within the meaning of Section VI(d) of the QPAM Exemption, because this latter formulation is used throughout PTE 2017–03. The Applicant states that the use of alternative language will be confusing and ambiguous and urges the Department to use the language used elsewhere in PTE 2017–03 instead. Accordingly, the Applicant requests that Section III(l), in pertinent part, be modified to read:

. . . If, during the Exemption Period, an affiliate of the JPMC Affiliated QPAMs (as defined in Section VI(d) of PTE 84–14) [10] is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately;

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(l) accordingly.

Comment 4: Deferred Prosecution Agreement

Section III(u) of the proposed exemption provides: *(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.*

Section III(v) of the proposed exemption provides: *(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.*

The Applicant requests that these conditions be modified to carve out a nonfiduciary line of business in JPMorgan Chase Bank and J.P. Morgan Securities LLC (JPMS). In connection with PTE 2017–03, the Department included an exception for an individual who worked for a non-fiduciary line of business within JPMorgan Chase Bank in Sections (a) and (b)—conditions that relate to the conduct underlying the Conviction—to ensure that the conditions accurately reflected the plea agreement could be met. The Applicant asserts that the new conditions in this exemption relating to the DPA should use similar language relating to a non-fiduciary line of business within JPMorgan Chase Bank and JPMS.

Accordingly, the Applicant requests that Sections III(u) and (v), in pertinent part, be modified to read:

(u) Apart from a non-fiduciary line of business within JPMorgan Chase Bank

[9] The Department notes that under this exemption a JPMC Affiliated QPAM may disclaim reliance on QPAM status in a written modification of a contract, arrangement, or agreement with a Covered Plan, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

[10] For purposes of Section I(g) of the QPAM Exemption, an ''affiliate'' of a person means—(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

and JPMS, and except as set forth in the Resolution Documents . . . 'Resolution Documents' refers to settlements entered into with the CFTC and SEC in connection with related, parallel proceedings on the same date as the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank and JPMS, . . .

Department's Response: The Department declines to make the requested change to proposed condition (u). Proposed condition (u) mirrors condition (a) in PTE 2017–03, because both conditions provide, in general terms, that except for a limited number of former employees, the JPMC Affiliated QPAMs and their employees did not know of nor have reason to know of the criminal conduct that is the subject of the relevant misconduct and did not participate in it. Further, the Department is concerned that the Applicant's ''Resolution Documents'' exception may effectively allow individuals who had knowledge of the misconduct that is the subject of the DPA to continue to work in the asset management lines of businesses of JPMC Affiliated QPAMs.

The Department is revising condition (v) consistent with the Applicant's request (*i.e.,* by adding an exception to the non-fiduciary business lines of business of JPMS), to more accurately reflect the terms of and parties to the DPA.

Comment 5: Timing of Audit

Section III(i)(1) of the proposal states: *Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor . . . Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by December 31, 2023. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by December 31, 2025. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027.*

The Applicant requests that the Department revert to the January 9 completion date for each audit that was specified in PTE 2017–03, instead of December 31.

The Applicant submits that there is no material advantage to plans in reducing the audit timeline and a December 31 deadline for the first two audits under the proposed exemption would also pose logistical challenges because of the holidays, both for the Auditor and the QPAMs.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(i)(1) accordingly.

Comment 6: Definition of JPMC

Section I(d) of the proposed exemption provides: *The term ''JPMC'' means JPMorgan Chase and Co.*

The Applicant states that PTE 2017–03 includes clarifying language that the definition of ''JPMC'' refers to the parent entity but does not include any subsidiaries or other affiliates. The Applicant states that a change in the definition of ''JPMC'' will be confusing because certain conditions apply specifically to the parent entity (JPMC), rather than subsidiaries or other affiliates, and the deletion of the clarifying language in the definition would inject ambiguity into such conditions and, for certain conditions, render them incapable of administration.

Accordingly, the Applicant requests that Section I(d) of the proposal be modified to read: *The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates.*

Department's Response: The Department agrees with the Applicant's requested change and has amended Section I(d) accordingly.

Comment 7: Timing of Policies and Training

Section III(h)(1) of the proposed exemption provides, in pertinent part: *Each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies).*

Section III(h)(2) of the proposed exemption provides, in pertinent part: *Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel . . .*

The Applicant notes that as written, there is no period provided for modifications required by the proposal (or a final exemption), which effectively requires any revisions to be completed and implemented before the effective date of a final exemption. The Applicant requests that Section III(h)(1) be amended to allow two months for any required modifications to be made to the Policies to the extent any modifications are required by this exemption.

With respect to the timing of the Training, the Applicant requests that the final annual Training under PTE 2017–03 must be completed by July 9, 2023, and the first annual Training under a final exemption must be completed by July 9, 2024.

Accordingly, the Applicant requests that Sections III(h)(1) and (2), in pertinent part, be modified to read:

(h)(1) By a date that is two (2) months after the effective date of this exemption, each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies) . . .

(h)(2) . . . The final annual training under PTE 2017–03 must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2023, and the first Training under this exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2024.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(h)(1) and (2) accordingly.

Comment 8: Required Notices

Section III(j)(7) of the proposed exemption provides: *Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement.*

Section III(k) of the proposed exemption provides: *Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM provides notice of the exemption as published in the* ***Federal Register****, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–*

14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a subadviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted, is updated, as necessary, by May 10, 2023.

The Applicant requests clarification that to the extent a Covered Plan client received notices as required pursuant to Sections I(j)(7) and I(k) of PTE 2017–03, a new notice would not be required, provided the website currently containing the materials stipulated under such sections of PTE 2017–03 is updated, as necessary, to incorporate any modifications to the comparable provisions in this exemption (*e.g.,* Sections III(j)(7) and III(k)), by May 10, 2023 (four months following the effective date of this exemption, if granted).

The Applicant states that if the expanded definition of ''actual losses'' in Section III(j)(2) is the only substantive amendment to this condition, as compared against PTE 2017–03, a repeat notice due solely to this modification would be likely to confuse Covered Plans without a material benefit.

The Applicant states that it is likely that many clients that retain the JPMC Affiliated QPAMs shortly after the effective date of the final exemption (January 10, 2023) will enter into investment management or comparable agreements with the JPMC Affiliated QPAMs that continue to include notification language referencing PTE 2017–03 and a link to the required materials thereunder. As the Department did through email clarification when PTE 2017–03 was published, the Applicant requests that it should also be considered to have met the notification requirements in the exemption for such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in the exemption is updated, as necessary, by May 10, 2023. The Applicant expects that clients that first become Covered Plan clients on or after May 10, 2023 will enter into agreements with the JPMC Affiliated QPAMs that include notification language specifically referencing this exemption, including links to the updated website containing the materials stipulated under the conditions of this exemption.

Accordingly, the Applicant requests that Section III(j)(7) be modified to read:

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. This condition will be deemed met for: (i) each Covered Plan that received a notice pursuant to Section I(i) of PTE 2016–15 or Section I(j)(7) of PTE 2017–03 prior to January 10, 2023 (the effective date of this exemption), and (ii) each Covered Plan that receives a notice on or after January 10, 2023, but before May 10, 2023, pursuant to an investment management or comparable agreement with the JPMC Affiliated QPAM that includes notification language referencing the obligations set forth in Section I(j) of PTE 2017–03 and a link to the required materials thereunder, provided that the website containing the materials stipulated under such section of PTE 2017–03 is updated, as necessary, to incorporate any modifications to the comparable provisions within this Section III(j)(7) by May 10, 2023 (four months following the effective date of this exemption). For Covered Plans that enter into an investment management or comparable agreement with the JPMC Affiliated QPAM on or after May 10, 2023, the JPMC Affiliated QPAM must agree to its obligations under this Section III(j) within such investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement (i.e., such agreements will include notification language referencing the obligations under this exemption—not PTE 2017–03—and a link to the required materials hereunder). This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03. This condition will also be met where the JPMC Affiliated QPAM previously agreed to a substantially similar obligation required by this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

The Applicant also requests that Section III(k) be modified to read:

Each JPMC Affiliated QPAM must provide a copy of the exemption as published in the ***Federal Register****, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 (collectively, the ''Exemption Notice Materials''), to each Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. This condition will be deemed met for: (i) each Covered Plan that received a notice pursuant to Section I(k) of PTE 2017–03 prior to January 10, 2023 (the effective date of this exemption), and (ii) each Covered Plan that receives a notice on or after January 10, 2023, but before May 10, 2023, pursuant to an investment management or comparable agreement with the JPMC Affiliated QPAM that includes notification language referencing the materials set forth in Section I(k) of PTE 2017–03 and a link to the required materials thereunder, provided that the website containing the materials stipulated under such section of PTE 2017–03 is updated, as necessary, to incorporate the Exemption Notice Materials specified in this Section III(k) by May 10, 2023 (four months following the effective date of the exemption). For*

Covered Plan clients that enter into a written investment management or comparable agreement with a JPMC Affiliated QPAM on or after May 10, 2023, the JPMC Affiliated QPAM will provide the Exemption Notice Materials described in this Section III(k) within such investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement (i.e., such agreements will include language referencing the Exemption Notice Materials under this Section III(k) of exemption—not PTE 2017–03—and a link to the website where such Exemption Notice Materials may be accessed). The notices may be delivered electronically (including by a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement;

Department's Response: The Department declines to make the requested changes with one exception. The Applicant has not demonstrated that simply updating a website without sending a corresponding notification of the update to Covered Plans would represent adequate notice. Without a corresponding notice that directs Covered Plans to access the updated website, Covered Plans may never become aware that (a) a new exemption has been published; or (b) that the obligations of the JPMC Affiliated under Section (III)(j) have been modified.

The Department confirms that the Applicant will meet the notification requirements in the exemption with respect to such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in the exemption is updated, as necessary, by May 10, 2023.

The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the clarified definition of actual losses as stated in Section III(j)(2) of this exemption (PTE 2023–01). The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the clarified definition of actual losses as provided in Section III(j)(2) of this exemption (PTE 2023–01). Covered Plans that previously received a notice in connection with PTEs 2016–15 or 2017–03 must receive a new notice if the notice they previously received did not include the definition of actual losses provided in this exemption.

Comment 9: Appointment of Compliance Officer

Section III(m) of the proposed exemption provides, in pertinent part: *Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein.*

The Applicant requests confirmation that there is no need to reappoint the Compliance Officer appointed pursuant to PTE 2017–03. In addition, the Applicant notes that PTE 2017–03 required JPMC to designate the Compliance Officer, rather than the Affiliated QPAMs or relevant lines of business. The Applicant requests confirmation that the JPMC Affiliated QPAMs or lines of business need not reappoint the Compliance Officer appointed by JPMC pursuant to PTE 2017–03.

Department's Response: The Department confirms that there is no need to reappoint the Compliance Officer appointed pursuant to PTE 2017–03.

Comment 10: Exemption Review

Section III(m)(2)(i) of the proposed exemption provides, in pertinent part: *The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: . . . the most recent Audit Report issued pursuant to this exemption or PTE 2017–03; . . .*

The Applicant submits that the Department did not intend for this condition to require the JPMC Affiliated QPAMs to comment on the audit report. Instead, the Applicant believes that the Department intended to require the Compliance Officer to comment on any violations raised by the audit. Accordingly, the Applicant requests that Section III(m)(2)(i), in pertinent part, be modified to read: *The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: . . . any compliance failures referenced in the most recent Audit Report issued pursuant to this exemption or PTE 2017–03;. . .*

Department's Response: The Department believes the Applicant's requested change is too narrow. However, the Department sees merit in focusing the JPMC Affiliated QPAM's review on each material error, recommendation, and compliance failure identified in the Audit Report, and has modified the exemption accordingly.

Comment 11: Direction of Investment Fund

Section III(d) of the proposed exemption provides, in pertinent part: *At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM in reliance on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM class exemption, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.*

The Applicant suggests that this condition should be simplified by referring to ''Covered Plan,'' as opposed to repeating in this provision the definition of ''Covered Plan'' already set forth in Section I(b).[11] As the language used in Section III(d) is substantively identical, using the term ''Covered Plan'' in this condition would achieve the same result.

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(d) accordingly.

Comment 12: Transition for Newly Acquired Asset Managers

The Applicant states that from time to time, JPMC acquires asset managers that rely, as of the effective date of the acquisition, on the QPAM Exemption. According to the Applicant, when a manager is in the process of being acquired, it is generally unwilling, or practically unable, to communicate with its clients regarding all the terms of the

[11] Section I(b) defines a ''Covered Plan'' to mean ''a plan subject to Part IV of Title I of ERISA (an 'ERISA-covered plan') or a plan subject to Code section 4975 (an 'IRA'), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14).''

acquiror's individual QPAM exemption, *e.g.,* in case the transaction does not close. In addition, the associated information and documentation may raise questions from plan clients that the manager being acquired cannot answer, and it would be inappropriate to allow the acquiror to talk directly to the manager's clients prior to close.

The Applicant states that, while the exemption has many requirements, all of which must be contained in the policies and procedures of the newly acquired manager, the acquired entity is typically unable to change its policies and procedures until the transaction has closed. Only at the acquisition's close does the acquired manager try to meld new policies and procedures related to the QPAM Exemption to its own policies.

The Applicant submits that the consequences for violating the exemption are severe, and the acquired manager would be understandably reluctant to accept these liabilities until it had trained its own employees. Further, the Applicant expects that it would be quite challenging for the independent auditor to insert an entirely new entity, with which it has no familiarity, into its audit testing in real-time (to the extent it even has the necessary resources to expand its audit and can confirm it remains independent from the acquired manager).

The Applicant states that in the prior and current exemptions (PTEs 2016–15 and 2017–03) the Department allowed for six months to comply with all of the exemption conditions at the outset. However, for a newly acquired manager, there is no time provided at all. The Applicant asserts that it is nearly impossible to come into full compliance with the exemption before any such acquisition closes, given all of the conditions regarding notices, training, policies, compliance regimes, etc.

As stated by the Applicant, if full compliance with the exemption is not in place as of an acquisition's closing date, the acquired manager may not be able to transact in reliance on PTE 84–14 on behalf of its plan clients, even where it was doing so immediately prior to the closing date. For plans managed by the acquired manager, transactions may have to be terminated, strategies changed, and guidelines amended, causing disruption to such plans through no fault of their own.

The Applicant requests that with respect to any newly acquired manager relying on PTE 84–14, the operative terms of the exemption shall first apply after a date that is six months after the closing date for the acquisition. In addition, the acquired manager could continue to rely on PTE 84–14 without conditions during that six-month period, which can be used to provide the necessary notices to the new affiliate's clients, provide training to the new affiliate's employees, draft policies and procedures, accommodate the audit schedule, and make sure that systems are in place to implement the ERISA policies, etc.

The Applicant requests the addition of the following language to the operative language of the exemption:

With respect to an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC, the newly-acquired JPMC Affiliated QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired JPMC Affiliated QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins on a date following the date that is six (6) months after the closing date for the acquisition.

Department's Response: The Department agrees, in part, with the Applicant's requested change. However, the Department believes any new JPMC Affiliated QPAM must be subject to an audit covering the entirety of the JPMC QPAM's reliance on this exemption. Also, the newly-acquired JPMC Affiliated QPAM must be included in the first audit that occurs following the QPAM's acquisition. The Department is adding a new condition (w) in accordance with the Applicant's request, with an amended final sentence that reads:

. . . To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the JPMC Affiliated QPAM was acquired.

Number of Convictions

The Proposal references ''Convictions'' in Section III(n). Because a single conviction necessitated the need for exemptive relief, the Applicant requests that this reference to ''Convictions'' be replaced by ''the Conviction.''

Department's Response: The Department agrees with the Applicant's requested change and has amended Section III(n) accordingly.

Comments From the Public

The Department received one written comment in support of the exemption and another written comment requesting that the exemption be denied. The comment requesting a denial however did not raise any substantive issues. The Department also received multiple phone calls from interested persons requesting an explanation of the exemption.

Comment From the Department

In Section III(j) of this grant notice, the Department changed several references from ''Section I'' to Section ''III.''

The Department also notes that the application file number was misstated in the proposed exemption as D–12035. The correct application file for this exemption is D–12064.

The complete application file (D–12064) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on October 20, 2022, at 87 FR 63802.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of the affected plans and their participants and beneficiaries; and (c) protective of the rights of the participants and beneficiaries of the affected plans.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B: [12]

Exemption

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–79–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15–cr–79–SRU (the Plea Agreement).

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Further, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(c) The term ''Exemption Period'' means January 10, 2023, through January 9, 2027.

(d) The term ''JPMC'' means JPMorgan Chase and Co., the parent entity, but does not include any subsidiaries or other affiliates.

(e) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager,'' as defined in Section VI(a) of PTE 84–14, that relies on the relief provided by PTE 84–14 or represents to Covered Plans that it qualifies as a QPAM, and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction.

(f) The term ''JPMC Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to whom JPMC owns a direct or indirect five percent or more interest but is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(g) The term ''Newly Acquired JPMC Affiliated QPAM'' means an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC.

Section II. Covered Transactions

Under this exemption, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections I(e) and I(f), respectively, would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period,[13] provided that the conditions set forth in in Section III below are satisfied.

Section III. Conditions

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, ''participate in'' refers not only to active participation n the criminal conduct of JPMC that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

[12] 76 FR 66637, 66644 (October 27, 2011).

[13] Section I(g) of PTE 84–14 generally provides relief only if ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct a Covered Plan to enter into any transaction with JPMC, or to engage JPMC to provide any service to such Covered Plan, for a direct or indirect fee borne by such Covered Plan, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to Covered Plan assets; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) By a date that is two (2) months after the effective date of this exemption, each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of the JPMC Affiliated QPAM's knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The JPMC Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The final annual training under PTE 2017–03 must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2023, and the first Training under this exemption must be completed by all relevant JPMC Affiliated QPAM personnel by July 9, 2024. The Training required under this exemption may be conducted electronically and must: (i) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (ii) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each JPMC Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by January 9, 2024. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by January 9, 2026. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period for completing the audit described in Section III(i)(1), the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all the JPMC Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The JPMC Affiliated QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section III(m);

(6) The auditor must notify the respective JPMC Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the JPMC Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the Plea Agreement that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Plea Agreement underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit, to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request access to all the workpapers created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) JPMC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and JPMC;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the

prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations. The term Actual Losses includes, but is not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM; and

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this exemption, if granted, is updated, as necessary, by May 10, 2023;

(l) The JPMC Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If, during the Exemption Period, an affiliate of *the JPMC Affiliated QPAMs (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately;*

(m)(1) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a JPMC Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect

to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material error, recommendation, and compliance failure identified in the most recent Audit Report; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the general counsel (or their functional equivalent) of JPMC and the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The annual Exemption Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates. The annual Exemption Reviews under this exemption must cover the following periods: January 10, 2023 through December 31, 2023; January 1, 2024 through December 31, 2024; January 1, 2025 through December 31, 2025; and January 1, 2026 through January 9, 2027.

(n) JPMC imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(o) JPMC complies in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) Each JPMC Affiliated QPAM maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the JPMC Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, JPMC must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the JPMC Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A JPMC Affiliated QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of JPMC or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank and JPMS, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and

agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

(w) With respect to an asset manager that becomes a JPMC Affiliated QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by JPMC or a subsidiary or affiliate of JPMC (a ''newly-acquired JPMC Affiliated QPAM''), the newly-acquired JPMC Affiliated QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired JPMC Affiliated QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly-acquired JPMC Affiliated QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the JPMC Affiliated QPAM was acquired.

Effective Date: This exemption is effective for a period of four years, beginning on January 10, 2023, and ending on January 9, 2027.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the exemption described above.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–00282 Filed 1–6–23; 4:15 pm]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Polar Programs (AC OPP) (1130).

Date and Time: February 13, 2023; 2:00 p.m. to 3:30 p.m. EST.

Place: National Science Foundation, 2415, Eisenhower Avenue, Alexandria, VA 22314 | Virtual via Zoom.

A virtual link will be posted on the AC OPP website at: *https://nsf.gov/geo/opp/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Sara Eckert, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Contact: (703) 292–7899, *seckert@nsf.gov.*

Purpose of Meeting: Advisory committee review of Science Advisory Subcommittee (SASC) report(s).

Agenda: Review and evaluate the SASC report(s), and vote on whether the report(s) should be forwarded to the NSF Office of Polar Programs.

Dated: January 4, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–00198 Filed 1–9–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2022–0220]

Pacific Gas and Electric Company; Diablo Canyon Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt; notice of opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Special Nuclear Materials (SNM) License No. SNM–2511, which currently authorizes Pacific Gas and Electric Company (PG&E, the licensee) to receive, possess, transfer, and store spent fuel from the Diablo Canyon Nuclear Power Plant (DCNPP) in the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI). The renewed license would authorize PG&E to continue to store spent fuel in the Diablo Canyon ISFSI for an additional 40 years beyond the current license expiration date of March 22, 2024.

DATES: A request for a hearing or petition for leave to intervene must be filed by March 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0220 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0220. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; *telephone:* 301–415–0624; *email: Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Markley, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–6293; *email: Christopher.Markley@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated March 9, 2022, an application from PG&E for renewal of SNM License No. SNM–2511 for the Diablo Canyon ISFSI for an additional 40 years (ADAMS Accession No. ML22068A189). The license currently authorizes PG&E to receive, possess, transfer, and store spent fuel from the DCNPP in the Diablo

Canyon ISFSI, located at the DCNPP site in San Luis Obispo County, California until the license term expires on March 22, 2024. This license renewal, if approved, would authorize PG&E to continue to store spent fuel at the Diablo Canyon ISFSI for an additional 40 years beyond its initial expiration, under the provisions of part 72 of title 10 of the Code of Federal Regulations (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.''

Following an NRC administrative completeness review, documented in a letter to PG&E dated September 8, 2022 (ADAMS Accession No. ML22238A239), the NRC staff has determined that the renewal application contains sufficient information for the NRC staff to begin its technical review and is acceptable for docketing. The application has been docketed in Docket No. 72–26, the existing docket for SNM License No. SNM–2511. If the NRC approves the renewal application, the approval will be documented in the renewal of SNM License No. SNM–2511. The NRC will approve the license renewal application if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a safety evaluation report. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1 866 672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing

adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Dated: January 5, 2023.

For the Nuclear Regulatory Commission.

Kristina L. Banovac,

Acting Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–00295 Filed 1–9–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–073; NRC–2022–0173]

GE-Hitachi Nuclear Energy Americas, LLC; GE-Hitachi Nuclear Test Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; docketing; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff accepts, dockets, and is considering an application for the renewal of Facility Operating License No. R–33, submitted by GE-Hitachi Nuclear Energy Americas, LLC (the licensee), dated November 19, 2020, as supplemented. The renewed license would authorize the licensee to operate the GE-Hitachi Nuclear Test Reactor at a maximum steady-state thermal power of 100 kilowatts for an additional 20 years from the date of issuance. The GE-Hitachi Nuclear Test Reactor is located at the GE Hitachi Nuclear Energy, Vallecitos Nuclear Center in Sunol, California. Because this application contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by March 13, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by January 20, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0173 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0173. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Duane Hardesty, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3724, email: *Duane.Hardesty@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 19, 2020, as supplemented by various letters referenced in the ''Availability of Documents'' section of this document, GE-Hitachi Nuclear Energy Americas, LLC filed with the NRC pursuant to Section 104 of the Atomic Energy Act of 1954, as amended, and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application to renew Facility Operating License No. R–33 for the GE-Hitachi Nuclear Test Reactor located in Sunol, California.

Based on its initial review of the application, as supplemented, the NRC staff has determined that the licensee has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 to enable the staff to undertake a review of the application, and that the application is therefore acceptable for docketing. The current Docket No. 50–073 for Facility Operating License No. R–33 will be retained. The determination to accept the application for docketing does not constitute a determination that a renewed license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds. Prior to a decision to renew the license, the NRC will make the findings required by the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations.

II. Availability of Documents

The documents identified in the following table are available to interested persons through the method indicated.

Document description	ADAMS accession No.
GE Hitachi Nuclear Energy—GE Nuclear Test Reactor License Renewal (R–33), dated November 19, 2020	ML20325A193 (Package).

Document description	ADAMS accession No.
GE Hitachi Nuclear Energy—GEH Supplemental Information Supporting GE Nuclear Test Reactor License Renewal Audit—Computer Files, dated September 10, 2021.	ML21211A617.
GE Hitachi Nuclear Energy—GEH Supplemental Information Supporting GE Nuclear Test Reactor License Renewal Audit—Audit Questions and Responses, dated September 22, 2021.	ML21265A246 (Package).
GE Hitachi Nuclear Energy—Response to Request for Additional Information for GE Nuclear Test Reactor License Renewal Application, dated April 22, 2022.	ML22112A236 (Package).
GE Hitachi Nuclear Energy—Response to Request for Public Docketing of Information Relating to GE Nuclear Test Reactor License Renewal, dated September 15, 2022.	ML22258A117 (Package).

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: January 4, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2023–00203 Filed 1–9–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2022; Order No. 6396]

FY 2022 Annual Compliance Report

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2022. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were compliant and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

DATES: *Comments are due:* January 31, 2023. *Reply Comments are due:* February 14, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

I. Introduction

On December 29, 2022, the United States Postal Service (Postal Service) filed with the Commission its Annual Compliance Report (ACR) for fiscal year (FY) 2022, pursuant to39 U.S.C. 3652. [1] Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2022 Comprehensive Statement on Postal Operations, its FY 2022 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. *See respectively,* 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20–23; FY 2022 ACR at 4–5. In line with past practice, some of the material in the FY 2022 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2022 were in compliance with applicable title 39 requirements.

II. Overview of the Postal Service's FY 2022 ACR

Contents of the filing. The Postal Service's FY 2022 ACR consists of a 104-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,[2] Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission.

Scope of the filing. The material appended to the narrative consists of: (1) domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2022 ACR at 4. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.*

''*Roadmap*'' *document.* A roadmap to the FY 2022 ACR can be found in Library Reference USPS–FY22–9. *Id.* at 5. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 39 CFR 3050.12. *Id.*

Methodology. The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in Library Reference USPS–FY22–9 and in prefaces accompanying the appended folders. *Id.* at 5–6.

Market Dominant product-by-product costs, revenues, and volumes. Comprehensive cost, revenue, and volume data for all Market Dominant products of general applicability are shown directly in the FY 2022 CRA or ICRA. *Id.* at 9.

The FY 2022 ACR includes a discussion by class of each Market Dominant product, including costs, revenues, and volumes, workshare discounts, and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2022 promotions. *Id.* at 9–47.

In response to the Commission's FY 2010 ACD directives,[3] the Postal Service states that it is providing information regarding its progress in increasing USPS Marketing Mail Flats (Flats) prices, implementing operational changes aimed at lowering flats costs, effectuating costing methodology improvements, and phasing out the subsidy in Flats. FY 2022 ACR at 32. In Docket No. RM2018–1, the Commission codified and expanded the first directive as rule 3050.50(f), which applies to all flat-shaped mail.[4] Accordingly, the Postal Service states that the information required by rule 3050.50(f) is provided in Library Reference USPS–FY2022–45, noting that the section titled ''Costing Methodology Changes and Subsidy of the Flats Product'' responds to the second and third directives. FY 2022 ACR at 35–38. In addition, the Postal Service presented its schedule of above-average price increases for Flats. *Id.* at 33–34.

Service performance. The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. *Id.* at 48. Responsive information appears in Library Reference USPS–FY22–29. *Id.*

Customer satisfaction. The FY 2022 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; discusses survey modifications; describes the methodology; presents a table with survey results; compares the results from FY 2021 to FY 2022; and provides information regarding consumer access to postal services. *Id.* at 56–89.

Competitive products. The FY 2022 ACR provides costs, revenues, and volumes for Competitive products of general applicability in the FY 2022 CRA or ICRA. For Competitive products not of general applicability, data are provided in non-public Library References USPS–FY22–NP2 and USPS–FY22–NP27. *Id.* at 90. The FY 2022 ACR also addresses the Competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 90–100.

Market tests; nonpostal services. The Postal Service discusses four market dominant market tests conducted during FY 2022 as well as nonpostal services. *Id.* at 101–102.

III. Procedural Steps

Statutory requirements. Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2022 ACR and on whether any rates or fees in effect during FY 2022 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 or Commission regulations promulgated thereunder. Commenters addressing Market Dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 39 U.S.C. 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing

[1] United States Postal Service FY 2022 Annual Compliance Report, December 29, 2022, at 1 (FY 2022 ACR). Public portions of the Postal Service's filing are available on the Commission's website at *http://www.prc.gov.*

[2] In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its ACD. However, as it has for the past several years, the Commission intends to issue a separate notice soliciting comments on the Comprehensive Statement and provide its related analysis in a separate report from the ACD.

[3] Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 106–107 (FY 2010 ACD).

[4] *Id.* at 35; *see* Docket No. RM2018–1, Order Adopting Final Rules on Reporting Requirements Related to Flats, May 8, 2019 (Order No. 5086).

Competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

Access to filing. The Commission has posted the publicly available portions of the FY 2022 ACR on its website at *http://www.prc.gov.*

Comment deadlines. Comments by interested persons are due on or before January 31, 2023. Reply comments are due on or before February 14, 2023. The Commission, upon completion of its review of the FY 2022 ACR, comments, and other data and information submitted in this proceeding, will issue its ACD.

Public Representative. Kenneth R. Moeller is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist him shall participate in or advise as to any Commission decision in this proceeding other than in his or her designated capacity.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. ACR2022 to consider matters raised by the United States Postal Service's FY 2022 Annual Compliance Report.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

3. Comments on the United States Postal Service's FY 2022 Annual Compliance Report to the Commission are due on or before January 31, 2023.

4. Reply comments are due on or before February 14, 2023.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–00189 Filed 1–9–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–315, OMB Control No. 3235–0357]

Proposed Collection; Comment Request; Extension: Regulation S

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by March 13, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 4, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00220 Filed 1–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96600; File No. SR–NASDAQ–2022–079]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rules 4702(b)(14) and (b)(15) Concerning Dynamic M–ELO Holding Periods

January 4, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 4702(b)(14) and (b)(15) of the Exchange's Rulebook to replace the static holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book with dynamic holding periods.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 4702(b)(14) and (15) of the Exchange's Rulebook to replace the static 10 millisecond holding period requirements for its Midpoint Extended Life Order (''M–ELO'') and Midpoint Extended Life Order Plus Continuous Book (''M–ELO+CB'') Order Types with dynamic holding periods (''Dynamic M–ELO and M–ELO+CB'' or collectively, ''Dynamic M–ELO'').

Background

In 2018, the Exchange introduced the M–ELO, which is a Non-Displayed Order priced at the Midpoint between the National Best Bid and Offer (''NBBO'') and which is eligible for execution only against other eligible M–ELOs and only after a minimum of one-half second passes from the time that the System accepts the order (the ''Holding Period'').[3] In 2019, the Exchange introduced the M–ELO+CB, which closely resembles the M–ELO, except that a M–ELO+CB may execute at the midpoint of the NBBO, not only against other eligible M–ELOs (and M–ELO+CBs), but also against Non-Displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders (''Midpoint Orders'') that rest on the Continuous Book for at least one-half second and have Trade Now enabled.[4]

When the Exchange designed M–ELO, it originally set the length of the Holding Period at one-half second because it determined that this time period would be sufficient to ensure that likeminded investors would interact only with each other, and with minimal market impacts. The Exchange believed that the longer length of the M–ELO Holding Period and its simplicity in design would provide greater protection for participants than they could achieve through competing delay mechanisms.

In 2020, however, the Exchange shortened the length of the Holding Period to 10 milliseconds.[5] The Exchange did so after studying two years of actual use and performance of M–ELOs, as well as customer feedback. That is, the Exchange came to understand that, while users of M–ELO and M–ELO+CB are less concerned with achieving rapid executions of their Orders than are other participants, they are not indifferent about the length of time in which their M–ELOs and M–ELO+CBs must wait before they are eligible for execution. Indeed, participants informed the Exchange that in certain circumstances, such as when they sought to trade symbols that on average had a lower time-to-execution than a half-second, they were reticent to enter M–ELOs or M–ELO+CBs. They indicated that the associated Holding Periods for these Order Types were longer than necessary to achieve the desired protections and that, during the residual portion of the Holding Periods, they risked losing out on favorable execution opportunities that would otherwise be available to them had they placed a non-MELO order.

Based upon this feedback, the Exchange studied the potential effects of reducing the length of the Holding Periods for both M–ELOs and M–ELO+CBs (as well as for Midpoint Orders that would execute against M–ELO+CBs). Ultimately, the Exchange determined that it could reduce the Holding Periods to 10 milliseconds without compromising the protective power that M–ELO and M–ELO+CB are intended to provide to participants and investors.[6] Thus, the Exchange determined that shortening the Holding Periods to 10 milliseconds for M–ELOs and M–ELO+CBs would increase the efficacy of the mechanism while not undermining the power of those Order Types to fulfill their underlying purpose of minimizing market impacts. At the same time, the Exchange determined that a reduction in the Holding Periods to 10 milliseconds would dramatically add to the circumstances in which M–ELOs and M–ELO+CBs would be useful to participants. In its M–ELO Timer Approval Order, the Commission agreed with the Exchange:

> The Commission notes that, with the proposed ten-millisecond Holding Period and Resting Period, M–ELOs and M–ELO+CBs would continue to be optional order types that are available to investors with longer investment time horizons, including institutional investors. The Commission also believes that the proposal could make M–ELOs and M–ELO+CBs more attractive for securities that on average have a time-to-execution of less than one-half second and, for investors who currently do not use M–ELOs and M–ELO+CBs for these securities, provide optional order types that could enhance their ability to participate effectively on the Exchange. The Commission notes that, if market participants determine that the proposal would make M–ELOs and M–ELO+CBs less attractive for their particular investment objectives, such market participants may elect to reduce or eliminate their use of these optional order types. Moreover, as noted above, the Exchange will continue to conduct real-time surveillance to monitor the use of M–ELOs and M–ELO+CBs to ensure that such usage remains appropriately tied to the intent of the order types. If, as a result of such surveillance, the Exchange determines that the shortened Holding Period does not serve its intended purpose or adversely impacts market quality, the Exchange would seek to make further recalibrations.[7]

For similar reasons and with even better potential results for participants, the Exchange now proposes to further refine the length of the Holding Periods for M–ELOs and M–ELO+CBs, this time through the application of innovative and patent pending machine learning technology.

Dynamic M–ELO

After receiving feedback from participants that even 10 millisecond Holding Periods for M–ELO and M–ELO+CB may, at times, exceed what is necessary to accomplish the underlying intent of these Order Types, the Exchange began to experiment with making further refinements to the duration of the Holding Periods. Ultimately, the Exchange concluded that shorter Holding Periods could achieve the same, if not better results for participants in terms of mark-outs, but not in all circumstances. That is, where prices of the underlying securities are

[3] *See* Securities Exchange Act Release No. 34–82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR–NASDAQ–2017–074) (''M–ELO Approval Order'').

[4] *See* Securities Exchange Act Release No. 34–86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (SR–NASDAQ–2019–048) (''M–ELO+CB Approval Order'').

[5] *See* Securities Exchange Act Release No. 34–88743 (April 24, 2020), 85 FR 24068 (April 30, 2020) (SR–NASDAQ–2020–011) (''M–ELO Timer Approval Order'').

[6] The Exchange examined each of its historical M–ELO executions to determine at what Midpoints of the NBBO the M–ELOs would have executed if their Holding Periods had been shorter than one-half second (500 milliseconds). After examining the historical effects of shorter Holding Periods of between 10 milliseconds and 400 milliseconds, the Exchange determined that a reduction of the M–ELO Holding Period to as short as 10 milliseconds would have caused an average impact on markouts of only 0.10 basis points (across all symbols). In other words, compared to the execution price of an average M–ELO with a one-half second Holding Period, the Exchange found that a M–ELO with a 10 millisecond Holding Period would have had an average post-execution impact that was only a tenth of a basis point per share—a difference in protective effect that is immaterial. *See* Nasdaq, ''The Midpoint Extended Life Order (M–ELO); M–ELO Holding Period,'' available at *https://www.nasdaq.com/articles/the-midpoint-extended-life-order-m-elo%3A-m-elo-holding-period-2020-02-13* (analyzing effects of shortened Holding Periods on M–ELO performance).

[7] M–ELO Timer Approval Order, *supra,* at 85 FR 24069.

stable, and not subject to imminent unfavorable changes, M–ELOs and M–ELO+CBs face lower risks of confronting spread-crossing orders, such that shorter Holding Periods could suffice to protect M–ELOs and M–ELO+CB from such orders. In periods of heightened price volatility, however, M–ELOs and M–ELO+CBs also face heightened risks, such that longer Holding Periods would continue to be beneficial in protecting M–ELOs and M–ELO+CBs from such risks. Thus, the Exchange determined that another across-the-board reduction of the static 10 millisecond Holding Periods would be sub-optimal because it could impact the performance of the M–ELO and M–ELO+CB Order Types during periods of heightened volatility.

In light of these observations, the Exchange tasked its artificial intelligence and machine learning laboratory (the ''AI Core Development Group'') to explore whether it could employ these innovative technologies to optimize the length of M–ELO and M–ELO+CB Holding Periods during various states of price volatility, and then to vary the lengths of the Holding Periods dynamically during the lifecycles of M–ELOs and M–ELO+CBs, with the objectives of improving the performance of these Order Types while also further reducing opportunity costs.

As the Exchange explains in greater depth in the attached white paper,[8] the AI Core Development Group proceeded to develop an artificial intelligence-based timer control system that will achieve these objectives.[9] The AI Core Development Group did so by using reinforcement learning techniques—machine learning paradigms which develop optimal solutions to problems over time by taking actions to solve them, generating feedback on the results of such actions, applying that feedback to direct and improve the next round of solutions, and then repeating the feedback loop until the paradigm achieves optimized solutions.

In this instance, the AI Core Development Group applied reinforcement learning techniques to a simulation of the M–ELO Book that it constructed using a representative data set from the first quarter of 2022 (the ''Training Period''). The Training Period data consisted of 380 out of the 6,257 symbols on the M–ELO Book (accounting for approximately 67 percent of M–ELO volume). The symbols chosen reflect both actively-traded and thinly-traded securities, and both low-priced and high-priced securities.

The AI Core Development Group then developed a machine learning model with more than 140 features[10] and applied it to the Training Period data. The Group programmed the model to value the achievement of higher fill rates or lower mark-outs than that which occurred in a historical simulation of M–ELOs and M–ELO+CBs involving the Training Period data.[11] The Group then programmed the model to seek to achieve its goals by taking one of five possible actions with respect to the duration of the Holding Periods at 30 second intervals[12] for each symbol during each trading day of the Training Period. That is, at each 30 second internal, the model evaluated market conditions for each symbol over the prior 30 second period and either kept the Holding Periods the same, increased/decreased them by 0.25 milliseconds, or increased/decreased them by 0.50 milliseconds.[13] After each decision-making round, the model utilized the results to inform its actions at the next 30 second increment.

In making its decisions, the model considered 142 categories of data points. A confluence of data points that correlated with an increase in volatility tended to cause the model to increase the durations of Holding Periods, including increases in the standard deviation of NBBO prices, the number of unique participants placing sell orders on M–ELO and M–ELO+CB, and the volume-weighted average of the NBBO spread. Conversely, a confluence of data points that correlated with greater price stability tended to cause the model to decrease the durations of Holding periods, such as an increase in the median and max number of shares per trade and the number of resting bids left in the M–ELO and M–ELO+CB Book.

The AI Core Development Team produced variations of its model that prioritized achievement of the lowest mark-outs, the highest fill rates, and a blend of these two objectives.[14] Through a process of learning and experimentation, the AI Core Development Group settled on a Dynamic M–ELO model that achieved substantial performance improvements for users of M–ELO and M–ELO+CB—both in terms of markouts and fill rates—as compared to the static 10 millisecond Holding Periods. As the White Paper explains in greater detail, Dynamic M–ELO yielded an average combined volume-weighted improvement of 31.7 percent, including a 20.3 percent increase in fill rates and a 11.4 percent reduction in mark-outs.[15] The White Paper provides a more fulsome explanation of these improvements.[16]

Based upon these exciting results, the Exchange now proposes to amend Rule 4702(b)(14) and (15) to replace the static 10 millisecond timers applicable to M–ELO and M–ELO+CB with Dynamic M–ELO Holding Periods. Using the Exchange's proprietary and patent pending technology, the Dynamic M–ELO system will evaluate and, as it deems necessary, adjust the length of the Holding Periods for each symbol comprising M–ELOs and M–ELO+CBs (and Midpoint Orders on the Continuous Book that opt to interact with M–ELO+CBs after resting on the Book) every 30 seconds throughout the Market Hours (each such 30 second interval, a ''Change Event''). In so doing, Dynamic M–ELO will help participants to achieve a more optimized blend of the underlying purposes of the M–ELO

[8] *See* Diana Kafkes et al., ''Applying Artificial Intelligence & Reinforcement Learning Methods Towards Improving Execution Outcomes,'' SSRN, October 19, 2022, available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4243985* (attached hereto as Exhibit 3) (the ''White Paper'').

[9] Although the AI Core Development Group acknowledges that an optimal Holding Period would update with every incoming order, it determined that training a reinforcement learning model on every order would be too difficult to program and too difficult to implement given the nanosecond latency requirements of the Exchange. The Group then investigated more feasible update cadences and determined the point at which optimal outcomes were best balanced with the level of programming and implementation difficulty to be between 15 and 30 second updates. Ultimately, the Group chose a 30 second update cadence to give the model the greatest opportunity to learn between potential actions.

[10] *See* White Paper, *supra,* at 31, for a description of these features.

[11] As the White Paper explains, the Group developed a model to simulate activity on the Exchange involving M–ELOs and M–ELO+CBs during the Training Period. *See* White Paper, *supra,* at 10.

[12] *See id.*

[13] The AI Core Development Group experimented with a range of permissible Holding Period durations. Ultimately, it concluded that it could produce better outcomes for M–ELO and M–ELO+CB participants than the existing approach using Holding Periods as low as 0.25 milliseconds and as high as 2.5 milliseconds, under normal market conditions.

[14] The AI Core Development Group also applied to the model a paradigm called ''retraining'' to combat the degradation of model performance that can otherwise occur as the reference data it uses for initial comparison becomes stale. Finally, the AI Core Development group added a stability protection mechanism to the model to provide maximum production to participants in the event that the model observes extraordinary levels of instability in the National Best Bid and Offer during the prior three seconds as compared to reference data. When the model detects such instability, it is programmed to increase the length of the Holding Period to 12 milliseconds for a period of 750 milliseconds.

[15] *See* White Paper, *supra,* at 22.

[16] *See id.*

and M–ELO+CB Order Types: protection against adverse selection (low mark-outs) without sacrificing opportunities to achieve high-quality executions (high fill rates).

A proposed M–ELO or M–ELO+CB with a Dynamic Holding Period will operate as follows. At the outset of Market Hours (approximately 9:30:00 a.m.), the Exchange will impose initial Holding Periods of 1.25 milliseconds for M–ELOs and M–ELO+CBs in all symbols. Thereafter, Holding Periods for a given symbol will become eligible to change dynamically from the initial duration beginning at 9:30:30AM and then at 30 second intervals thereafter during Market Hours. The Exchange will then apply to the M–ELO or M–ELO+CB Order a Holding Period that is of the duration that prevailed at the time of entry. For example, if participant A enters a M–ELO for symbol XYZ at 9:30:25 a.m., then Holding Period for that M–ELO will be 1.25 milliseconds. If at 9:30:30:00 a.m., the System decides to lower the duration of the Holding Period by 0.50 milliseconds, and then participant B enters a M–ELO for symbol XYZ at 9:30:45 a.m., then the System will assign a 0.75 millisecond Holding Period to participant B's M–ELO. To be clear, the System will determine Dynamic M–ELO Holding Periods independently for M–ELOs and M–ELO+CBs in each symbol.

During normal market conditions, the range of potential Holding Period durations for M–ELOs and M–ELO+CBs will be between 0.25–2.50 milliseconds, with the Holding Period duration being eligible to change by increments of either 0.25 or 0.50 milliseconds at each Change Event. Thus, if the Holding Period for a M–ELO in symbol XYZ is set at 0.75 milliseconds at 2:22:11 p.m., and at 2:22:41 p.m., the System determines to increase the duration of the Holding Period, it may do so only by 0.25 or 0.50 milliseconds during that event.

When a Change Event occurs, and the System determines to adjust the duration of a Holding Period for a symbol, that adjustment will apply, not only to all M–ELOs and M–ELO+CBs for that symbol entered within the 30 second period after the Change Event occurs, but also to M–ELOs and M–ELO+CBs entered prior to the Change Event with unexpired Holding Periods (with applicability retroactive to the time of Order acceptance). Thus, if a participant enters a M–ELO in symbol XYZ at 1:14:299 p.m., and the prevailing Holding Period applicable to that M–ELO is 2 milliseconds, and at 1:14:30 p.m., the System modifies the Holding Period to be 1.5 milliseconds, then the M–ELO will become eligible to execute at 1:14:3005 p.m. This is the case because the M–ELO will have already expended 1 millisecond of its Holding Period as of the time of the Change Event; thereafter, the M–ELO will need to rest only another 0.5 milliseconds to become eligible to execute under the new 1.5 millisecond Holding Period (as measured from 1:14:299 p.m.). This last feature ensures that the M–ELO Book maintains time priority among M–ELOs and M–ELO+CBs in a dynamic environment. That is, it ensures that no M–ELO or M–ELO+CB with an unexpired Holding Period at the time of a Change Event will end up becoming eligible to execute later than a M–ELO entered after the Change Event which has a shorter Holding Period applicable to it.

If at any time, the System detects extraordinary instability in a symbol, then the System will activate a ''stability protection mechanism'' to provide an extra layer of protection to M–ELO and M–ELO users from the heightened risks of adverse selection that exists during such periods of instability.[17] The stability protection mechanism will override the prevailing Holding Periods for M–ELOs and M–ELO+CBs in a symbol experiencing extraordinary instability and immediately increase the duration of those Holding Periods to 12 milliseconds for a period of 750 milliseconds. The System may activate the stability protection mechanism even between Change Events. The System will evaluate, at each NBBO update, whether market conditions remain extraordinarily unstable and, if so, it will restart the 750 millisecond Stability Protected Period and maintain the 12 millisecond Holding Period until conditions stabilize. Once the System determines that market conditions have stabilized (*i.e.,* all measurements for the symbol are at or below the threshold value throughout the duration of the prevailing Stability Protected Period), the System will revert the duration of the Holding Periods to that which prevailed as of the Change Event that occurred immediately prior to the activation of the stability protection mechanism or, if the stability protection mechanism was active when a Change Event occurred, to the duration selected at the immediately preceding Change Event. The System will then proceed to reevaluate the duration of the Holding Periods as per the regular schedule of Change Events.

The following is an illustration of the operation of the stability protection mechanism. At 11:10:04 a.m., the prevailing Holding Period for M–ELOs in symbol XYZ is 1.5 milliseconds. At the same time, the NBBO for symbol XYZ updates. The System looks back at the prior three seconds of trading in symbol XYZ and finds that during that period, the highest observed NBBO midpoint was $10.05, and the lowest was $10.00, such that the difference between these two values is a range of $0.05. The System then looks back at trading behavior for symbol XYZ during the immediately preceding trading day. In doing so, the System calculates the value of the threshold that would have caused the symbol to be deemed extraordinarily unstable for one percent of the trading day; the System determines that this threshold value is a range of $0.03. The System then compares the $0.03 threshold to its measurement of the prior three seconds of NBBO changes ($0.05), and concludes that over these past three seconds, the symbol is extraordinarily unstable. Accordingly, the System activates the stability protection mechanism and the Holding Period for M–ELOs in symbol XYZ immediately increases to 12 milliseconds for a period of 750 milliseconds. However, 5 milliseconds after the Stability Protection Period commences, the NBBO updates again, thus prompting the System to repeat its assessment of the stability of the symbol in light of the update. This reassessment reveals that the symbol remains unstable, such that a new Stability Protection Period of 750 milliseconds begins at that time (overriding the pre-existing Period). Over the course of this new Stability Protection Period, the NBBO shifts two more times, but each of the ensuing reassessments indicate that the NBBO ranges for the symbol have fallen below the $0.03 threshold. The Stability Protection Period elapses 750 milliseconds after it began with the symbol remaining stable. Thus, the Holding Period reverts to 1.5 milliseconds.

If the Exchange halts trading in a symbol, then upon resumption of

[17] For purposes of this Rule, the System determines that ''extraordinary instability'' for a symbol exists through observations it makes following every change in the NBBO for that symbol that occurs during the trading day. When the NBBO changes, the System looks back at the prior three seconds of trading and measures the difference between the highest and the lowest NBBO midpoint values that occurred during that period, and then it compares that measurement to a threshold value for the symbol. The System concludes that extraordinary instability exists for a symbol if the measurement exceeds the threshold value.

The threshold value for a symbol, in turn, is the difference between the highest and the lowest NBBO midpoint values for the symbol that, if applied to its trading activity during the prior trading day, would have caused the System to deem trading in the symbol to be extraordinarily unstable for as close to one percent of that day as possible.

trading, any new M–ELO or M–ELO+CB in that symbol and any pending M–ELO or M–ELO+CB in that symbol with an unexpired Holding Period will be subject to a new 12 milliseconds Holding Period (running from the time when trading resumes) until the next scheduled Change Event, at which point the System may determine to adjust that Holding Period to a duration within the range applicable under normal market conditions.[18] If, however, the System determines that extraordinary instability in the symbol exists, it may instead determine to activate the stability protection mechanism and maintain the duration of the Holding Period at 12 milliseconds for another 750 milliseconds. This design will help to ensure that M–ELOs and M–ELO+CBs receive added protection coming out of halt conditions.[19]

The Exchange notes that same dynamic process described above will also apply to and govern the time periods during which Midpoint Orders on the Continuous Book must rest before they will become eligible to interact with M–ELO+CBs (provided that participants have opted for their Midpoint Orders to interact with M–ELO+CBs). Thus, the same Holding Period duration that the System sets for a M–ELO+CB in a symbol during Regular Market Hours will also be the length of time that a Midpoint Order must rest on the Continuous Book must rest before it may interact with a M–ELO+CB.

Apart from these impacts of Dynamic Holding Periods, M–ELOs and M–ELO+CBs will continue to behave as they do now in all respects, and as set forth in Rules 4702(b)(14) and (15).

It is important to note that within the parameters discussed herein and in the White Paper, the Exchange will continue to re-train Dynamic M–ELO and M–ELO+CB regularly so that the model will continue to learn from and act upon the basis of new data, and further improve its performance over time. However, the Exchange will not modify the underlying structure of Dynamic M–ELO and M–ELO+CB without first obtaining the Commission's approval to do so, including modifications to the conditions under which the model will adjust the duration of Holding Periods, the frequency with which the model my adjust the Holding Periods, and the range of Holding Period durations available to M–ELOs and M–ELO+CBs.[20]

Implementation

The Exchange intends to make the proposed change effective for M–ELOs and M–ELO+CBs in the Second or Third Quarter of 2023, but that time frame is subject to change. The Exchange will publish a Trader Alert in advance of making the proposed change effective.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, [21] in general, and furthers the objectives of Section 6(b)(5) of the Act, [22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing for more widespread use of M–ELOs and M–ELO+CBs.

When the Commission approved the M–ELO and the M–ELO+CB, it determined that these Order Types are consistent with the Act because they ''could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.'' [23] Nothing about the Exchange's proposal should cause the Commission to revisit or rethink this determination. Indeed, the proposal will not alter the fundamental design of these Order Types, the manner in which they operate, or their effects.

Even with Dynamic M–ELO Holding Periods, M–ELOs and M–ELO+CBs will continue to provide their users with protection against information leakage and adverse selection—and they will do so at levels which are substantially undiminished from that which they provide now.[24]

At the same time, however, the proposal will benefit market participants and investors by reducing the opportunity costs of utilizing M–ELOs and M–ELO+CBs. The proposal, in other words, will re-calibrate the lengths of the Holding Periods so that M–ELOs and M–ELO+CBs will operate in the ''Goldilocks'' zone—their Holding Periods will not be so short as to render them unable to provide meaningful protections against information leakage and adverse selection, but the Holding Periods also will not be too long so as to cause participants and investors to miss out on favorable execution opportunities. Nasdaq believes the proposal will render M–ELOs and M–ELO+CBs more useful and attractive to market participants and investors, and this increased utility and attractiveness, in turn, will spur an increase in M–ELO and M–ELO+CB use cases on the Exchange, both from new and existing users of M–ELOs and M–ELO+CBs. Ultimately, the proposal should enhance market quality by increasing opportunities for midpoint executions on the Exchange.

The Exchange notes that use of Dynamic M–ELOs and M–ELO+CBs remains voluntary for all market participants. Accordingly, if any market participant feels that the dynamic Holding Periods are still too long or too short or because competing venues offer more attractive delay mechanisms, then the participants are free to pursue other trading strategies or utilize other trading venues. They need not utilize Dynamic M–ELOs or M–ELO+CBs.

Finally, the Exchange notes that it will continue to conduct real-time surveillance to monitor the use of M–ELOs and M–ELO+CBs to ensure that such usage remains appropriately tied to the intent of the Order Types. If, as a result of such surveillance, the Exchange determines that the Dynamic M–ELO Holding Periods do not serve their intended purposes, or adversely impact market quality, then the Exchange will seek to make further re-calibrations.

[18] Prior to commencement of a new 12 millisecond Holding Period for a new or pending M–ELO or M–ELO+CB following a Halt, the System will first determine whether the M–ELO or M–ELO+CB is or remains eligible for execution. That is, the Holding Period will commence only if, upon commencement of trading following the Halt, the midpoint price for the Order is within the limit set by the participant. If not, the System will hold the Order until the midpoint falls within the limit set by the participant, at which time the 12 millisecond Holding Period will commence.

[19] Also as a safeguard, the System will apply a default Holding Period of 12 milliseconds to a M–ELO or M–ELO+CB if ever it fails to receive a signal during a Change Event as to whether the System should adjust or maintain the duration of the prevailing Holding Period. The System will continue to apply the default 12 millisecond Holding Period until the next Change Event where the signal is restored and the System is able to act dynamically again.

[20] In addition to the proposed changes described above, the Exchange proposes to delete an extraneous reference in Rule 4702(b)(15) to M–ELO+CB being eligible to execute against a Midpoint Order on the Continuous Book if the Continuous Book order has the ''Midpoint'' Trade Now Attribute enabled. In a prior filing, the Exchange folded the concept of ''Midpoint Trade Now'' into the general ''Trade Now'' Attribute. *See* Securities Exchange Act Release No. 34–92180 (June 15, 2021), 86 FR 33420 (June 24, 2021)(SR–NASDAQ–2021–044).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] M–ELO Approval Order, *supra* 83 FR at 10938–39; M–ELO+CB Approval Order, *supra,* 84 FR at 48980.

[24] *See* note 6, *supra.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that this proposal will promote the competitiveness of the Exchange by rendering its M–ELO and M–ELO+CB Order Types more attractive to participants.

The Exchange adopted the M–ELO and M–ELO+CB as pro-competitive measures intended to increase participation on the Exchange by allowing certain market participants that may currently be underserved on regulated exchanges to compete based on elements other than speed. The proposed change continues to achieve this purpose. With Dynamic M–ELO Holding Periods, both M–ELOs and M–ELO+CBs will afford their users with a level of protection from information leakage and adverse selection that is better from what is achievable at present.[25] At the same time, the Dynamic Holding Periods will increase opportunities to interact with other like-minded investors with longer time horizons while also lowering the opportunity costs for participants that utilize M–ELOs and M–ELO+CBs, particularly for securities that trade within the ''Goldilocks'' zone. In sum, the proposed changes will not burden competition, but instead may promote competition for liquidity in M–ELOs and M–ELO+CBs by broadening the circumstances in which market participants may find such Orders to be useful. With the proposed changes, market participants will be more likely to determine that the benefits of entering M–ELOs and M–ELO+CBs outweigh the risks of doing so.

The proposed change will not place a burden on competition among market venues, as any market may adopt an order type that operates similarly to a M–ELO or a M–ELO+CB with Dynamic M–ELO Holding Periods.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–079. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–079 and should be submitted on or before January 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00209 Filed 1–9–23; 8:45 am]

BILLING CODE 8011–01–P

[25] *See* White Paper, *supra.*

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–030, OMB Control No. 3235–0290]

Submission for OMB Review; Comment Request; Extension: Rule 17f–1(g)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501*et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–1(g) (17 CFR 240.17f–1(g)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–1(g) requires that all reporting institutions (*i.e.,* every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the

Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are approximately 10,018 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.5511 hours per respondent per year). Thus, the total estimated annual time burden for all respondents is 5,521 hours (10,018 × 0.5511 hours = 5,521). Assuming an average hourly cost for clerical work of $50.00, the average total yearly record retention internal cost of compliance for each respondent would be $27.56 ($50 × 0.5511 hours). Based on these estimates, the total annual internal compliance cost for the estimated 10,018 reporting institutions would be approximately $276,096 (10,018 × $27.56).

Rule 17f–1(g) does not require periodic collection, but it does require retention of records generated as a result of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Securities Exchange Act deems such information to be confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by February 9, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 4, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00218 Filed 1–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–570, OMB Control No.3235–0632]

Proposed Collection; Comment Request; Extension: Rule 12h–1(f)

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12h–1(f) (17 CFR 240.12h–1(f)) under the Securities Exchange Act of 1934 (''Exchange Act'') provides an exemption from the Exchange Act Section 12(g) registration requirements for compensatory employee stock options of issuers that are not required to file periodic reports under the Exchange Act. The information required under Exchange Act Rule 12h–1 is not filed with the Commission. Exchange Act Rule 12h–1(f) permits issuers to provide the required information to the option holders either by: (i) physical or electronic delivery of the information; or (ii) written notice to the option holders of the availability of the information on a password-protected internet site. We estimate that it takes approximately 2 burden hours per response to prepare and provide the information required under Rule 12h–1(f) and that the information is prepared and provided by approximately 40 respondents. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the company for a total annual reporting burden of 20 hours (0.5 hours per response × 40 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by March 13, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 4, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00221 Filed 1–9–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance Centennial Airport, Centennial, Colorado

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

ACTION: Notice of request to waive aeronautical land use assurance.

SUMMARY: The FAA proposes to rule and invite public comment on a proposal from the Centennial Airport, Executive Director to change a portion of the airport from aeronautical use to non-aeronautical use at Centennial Airport, Englewood, Colorado. The proposal involves a parcel of airport property on the Northeast side of the airfield.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, *michael.b.matz@faa.gov,* (303) 342–1251.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Fronapfel, Executive Director,

Centennial Airport, 7565 South Peoria Street, Unit D9, Englewood, CO 80112, *mfronapfel@centennialairport.com,* (303) 790–0598; or Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, 26805 E 68th Ave., Suite 224, Denver, CO 80249, *michael.b.matz@faa.gov,* (303) 342–1251. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change a portion of the airport from aeronautical use to non-aeronautical use under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2). The proposal consists of 15.949 acres located North of S Peoria St. near the intersection of S Peoria St. and Broncos Pkwy. The land is currently identified as Aeronautical Use on the Airport Layout Plan (ALP). There is an existing FAA Flight Service Station bordering this area that will not be part of the release request. This section of Parcel 1 is separated from the majority of airport property by S Peoria St. The FAA concurs that the parcel is no longer needed for airport purposes. The proposed use of this property is compatible with existing airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, as published in the **Federal Register** on February 16, 1999.

Issued in Denver, Colorado, on January 4, 2023.

Marc Miller,

Acting Manager, Denver Airports District Office.

[FR Doc. 2023–00234 Filed 1–9–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land Use Assurance Centennial Airport, Centennial, Colorado

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

ACTION: Notice of request to waive aeronautical land use assurance.

SUMMARY: The FAA proposes to rule and invite public comment on a proposal from the Centennial Airport, Executive Director to change a portion of the airport from aeronautical use to non-aeronautical use at Centennial Airport, Englewood, Colorado. The proposal involves a parcel of airport property on the Northeast side of the airfield.

DATES: Comments are due within 30 days of the date of the publication of this notice in the **Federal Register**. Emailed comments can be provided to Mr. Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, *michael.b.matz@faa.gov,* (303) 342–1251.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Fronapfel, Executive Director, Centennial Airport, 7565 South Peoria Street, Unit D9, Englewood, CO 80112, *mfronapfel@centennialairport.com,* (303) 790–0598; or Michael Matz, Project Manager/Compliance Specialist, Denver Airports District Office, 26805 E 68th Ave., Suite 224, Denver, CO 80249, *michael.b.matz@faa.gov,* (303) 342–1251. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change a portion of the airport from aeronautical use to non-aeronautical use under the provisions of Title 49, U.S.C. 47153(c), and 47107(h)(2). The proposal consists of 4.824 acres located on the South side of Arapahoe Rd. near the intersection of S Peoria St. and Arapahoe Rd. The land is currently identified as Aeronautical Use on the Airport Layout Plan (ALP). This section of Parcel 26 is separated from the majority of aeronautical property by the Family Sports Center & Fire Station to the South, and a Golf Course to the West. The FAA concurs that the parcel is no longer needed for airport purposes. The proposed use of this property is compatible with existing airport operations in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, as published in the **Federal Register** on February 16, 1999.

Issued in Denver, Colorado, on January 4, 2023.

Marc Miller,

Acting Manager, Denver Airports District Office.

[FR Doc. 2023–00235 Filed 1–9–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by Florida Department of Transportation (FDOT), pursuant to 23 U.S.C. 327, and other Federal Agencies.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed project along the Venetian Causeway which is approximately 2.5 miles long, and is primarily a two-lane undivided facility that provides a major link between the cities of Miami and Miami Beach in Miami-Dade County, Florida. The Causeway includes ten fixed span bridges and two bascule leaf span bridges over the Intracoastal Waterway (ICWW) extending from North Bayshore Drive (City of Miami) to Purdy Avenue (City of Miami Beach). The twelve bridges are numbered Bridge 1 to Bridge 12 from west to east. The proposed improvements replace the fixed spans of Bridges 2 through 12 with concrete arched beams and the bascule span at Bridge 10 with a double leaf bascule bridge to meet current design and safety requirements. The proposed typical section is 16-ft wider than the existing as a result of enhanced pedestrian and bicycle provisions, and consists of an 11-ft. lane, 7-ft. bicycle lane and 8-ft. sidewalk in each direction. The bascule span at Bridge 1 has already been replaced and is not included in the proposed improvements. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before June 9, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FDOT: Jennifer Marshall, P.E., Director, Office of Environmental Management, FDOT, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399; telephone (850) 414–4316; email: *Jennifer.Marshall@dot.state.fl.us.* The FDOT Office of Environmental Management's normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this

project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) approved on December 15, 2022 and in other project records for the listed project. The Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) and other documents for the listed project are available by contacting FDOT at the address provided above. The Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) and additional project documents can be viewed and downloaded from the project website at: *http://www.fdotmiamidade.com/venetianbridgestudy.*

The project subject to this notice is:

Project Location: Miami-Dade County, Florida, replacement of eleven of the twelve bridges that form the Venetian Causeway from North Bayshore Drive (City of Miami) to Purdy Avenue (City of Miami Beach).

Project Actions: This notice applies to the Environmental Assessment (EA) with Finding of No Significant Impact (FONSI), and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice including but not limited to the Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges, the Endangered Species Act—Section 7 Consultation Biological Opinion, Section 106 of the National Historic Preservation Act Memorandum of Agreement, and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321*et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air:* Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section 401, Section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Issued on: January 4, 2023.

Karen M. Brunelle,

Director, Office of Project Development, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2023–00239 Filed 1–9–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–18]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On July 5, 2022, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before February 9, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 868–9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before

OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On July 5, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 87 FR 39896. FRA received one comment from the public that was outside the scope of this notice.

Before OMB decides whether to approve the proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49 CFR part 215 contains freight car safety standards, including conditions for freight cars in dedicated service. ''Dedicated service'' means the exclusive assignment of railroad cars to the transportation of freight between specified points under the conditions listed in 49 CFR 215.5(d), including stenciling, or otherwise displaying, in clear legible letters on each side of the car body, the words ''Dedicated Service.'' The railroad must notify FRA in writing that the cars are to be operated in dedicated service.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 754 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4.

Total Estimated Annual Burden: 4 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $310.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49 CFR 218.30 and 218.77 require that remotely controlled switches be properly lined to protect workers as they inspect or service rolling equipment on track or occupy camp cars. These sections require the operators of the remotely controlled switches to remove the locking device controlling the switches only once they have been informed by the person in charge of the workers that it is safe to do so. Additionally, these operators are required to maintain a record of each protection request for 15 days. Operators of remotely controlled switches use the information as a record documenting protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA and State inspectors monitoring regulatory compliance.

In this 60-day notice, FRA decreased the estimated paperwork burden under § 218.30 by 1,209 hours. The decreased burden reflects the reduction in number of work events in the railroad industry.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 53 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 1,837,925.

Total Estimated Annual Burden: 22,974 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,375,912.

Title: Bad Order, Home Shop Card, and Stenciling Reporting Mark.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, railroads are required to inspect freight cars placed in service and take remedial action when defects are identified. A railroad freight car with a part 215 defect may be moved to another location for repair only after the railroad has complied with the process under 49 CFR 215.9. Section 215.9 requires railroads to affix a ''bad order'' tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged ''bad order'' so it can be readily identified and moved to another location for repair purposes only, and so that the maximum speed and other restrictions necessary for safely conducting the movement are known. At the repair location, the ''bad order'' tag serves as a notification of the defective condition of the freight car. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. When inspecting a freight car, FRA and State inspectors review all pertinent records to determine railroads' compliance with the movement restrictions of 49 CFR 215.9.

Additionally, § 215.301 requires railroads and private car owners to stencil or otherwise display identification marks on freight cars, including a car number and build date. FRA uses the identification marks to help obtain certain information related to a car's compliance with Federal safety laws. The marks are used consistently across railroad records to identify the car and show: the type of car, what it is carrying, its movement history, and current maintenance schedule. Using the marks to identify the cars helps FRA determine the application of Federal safety laws to that car and who is responsible for compliance. FRA also uses this information to determine if the freight car qualifies for dedicated service and is excluded from the requirements of part 215. Railroads use the required information to provide identification and control so that dedicated cars remain in the prescribed service.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 754 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 285,000.

Total Estimated Annual Burden: 38,000 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $2,290,260.

Title: Rear End Marking Devices.

OMB Control Number: 2130–0523.

Abstract: Title 49 CFR part 221 contains requirements for rear end marking devices. Railroads must provide FRA with a detailed description of the type of marking devices used for any locomotive operating singly or for

cars or locomotives operating at the end of a train (trailing end) to ensure that they meet minimum standards for visibility and display. Specifically, part 221 requires railroads to furnish a certification that each device has been tested in accordance with current ''Guidelines for Testing of Rear End Marking Devices.'' Additionally, part 221 requires railroads to furnish detailed test records, which include the names of testing organizations, test descriptions, number of samples tested, and the test results, to demonstrate compliance with the performance standard.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 754 railroads and 24 manufacturers.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 2.

Total Estimated Annual Burden: 2 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $155.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2023–00293 Filed 1–9–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to the Federal Railroad Administration

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: FRA is issuing this notice to advise all interested stakeholders that it has issued and made available on its website a guidance document addressing requirements related to the submission of requests for waivers, applications to modify or discontinue a railroad signal system, and other special approval requests to FRA. The guidance document is intended to provide information regarding existing requirements and best practices when submitting requests for waivers, block signal applications, and other special approval requests to FRA.

FOR FURTHER INFORMATION CONTACT: Lucinda Henriksen, Senior Advisor, Office of Railroad Safety, FRA, telephone: 202–657–2842, email: *lucinda.henriksen@dot.gov;* or Veronica Chittim, Senior Attorney, Office of the Chief Counsel, telephone: 202–480–3410, email: *veronica.chittim@dot.gov.*

SUPPLEMENTARY INFORMATION: The guidance document titled *Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to FRA* is available on FRA's website at *https://railroads.dot.gov/elibrary/guidance-submitting-requests-waivers-block-signal-applications-and-other-approval-requests.* The document is intended to provide information regarding existing requirements and best practices when submitting to FRA requests for waivers, block signal applications, and other special approvals. The guidance document replaces previous guidance on this subject, including the document titled ''Waivers, Block Signal Applications, and Special Approvals'' last updated on September 28, 2012. Except when referencing laws, regulations, or orders, the contents of the guidance document do not have the force and effect of law and are not meant to bind the public in any way.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–00238 Filed 1–9–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning taxation and reporting of REIT excess inclusion income.

DATES: Written comments should be received on or before March 13, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–2036 or Notice 2006–97, Taxation and Reporting of REIT Excess Inclusion Income.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxation and Reporting of REIT Excess Inclusion Income.

OMB Number: 1545–2036.

Notice Number: Notice 2006–97.

Abstract: This notice requires certain REITs, RICS, partnerships and other entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Current Actions: There are no changes being made to the notice that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–00249 Filed 1–9–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Form 8610 and Schedule A (Form 8610)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden associated with Form 8610, Annual Low-Income Housing Credit Agencies Report, and Schedule A (Form 8610), Carryover Allocation of Low-Income Housing Credit.

DATES: Written comments should be received on or before March 13, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–0990 or Buildings qualifying for carryover allocations in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Buildings qualifying for carryover allocations.

OMB Number: 1545–0990.

Form Number(s): 8610, Sch A (F8610).

Abstract: State housing credit agencies (Agencies) are required by Code section 42(l)(3) to report annually the amount of low-income housing credits that they allocated to qualified buildings during the year. Agencies report the amount allocated to the building owners and to the IRS in Part I of Form 8609. Carryover allocations are reported to the Agencies in carryover allocation documents. The Agencies report the carryover allocations to the IRS on Schedule A (Form 8610). Form 8610 is a transmittal and reconciliation document for Forms 8609, Schedule A (Form 8610), binding agreements, and election statements.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 1,353.

Estimated Time per Respondent: 4 Hour 58 minutes.

Estimated Total Annual Burden Hours: 6,738.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: January 4, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–00251 Filed 1–9–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before March 13, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–1533 or Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this collection should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–00248 Filed 1–9–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on January 31, 2023, at 9:30 a.m., of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Pulbic Law 103–202, 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: January 4, 2023.

Frederick E. Pietrangeli,

Director, (for Office of Debt Management).

[FR Doc. 2023–00237 Filed 1–9–23; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0745]

Agency Information Collection Activity: Request for Certificate of Veteran Status

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it

includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0745.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0745'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Request for Certificate of Veteran Status, VA form 26–8261a.

OMB Control Number: 2900–0745.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8261a is used by VA to determine an applicant's eligibility for a possible reduced down payment when obtaining a loan insured by the Federal Housing Administration (FHA), under the provisions of Section 203(b)(2) or 220(d)(a) of the National Housing Act as amended. FHA actually provides the benefit. However, VA is charged with determining if the veteran-applicant meets the basic eligibility requirements regarding length and character of service. If eligibility is established, VA issues the applicant a Certificate of Veterans Status that is then used when the borrower obtains an FHA insured loan. This certificate gives the borrower the possibility of a reduced down payment on an FHA backed loan.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 65648 on October 31, 2022, page 65648.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4 hours

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–00246 Filed 1–9–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 6 January 10, 2023

Part II

Environmental Protection Agency

40 CFR Part 52
Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-Hour $PM_{2.5}$ Serious Area and 189(d) Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2022–0115; FRL–9755–01–R10]

Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-Hour $PM_{2.5}$ Serious Area and 189(d) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part the state implementation plan (SIP) revisions, submitted by the State of Alaska (Alaska or the State) to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the Fairbanks North Star Borough $PM_{2.5}$ nonattainment area (Fairbanks $PM_{2.5}$ Nonattainment Area). Alaska made these submissions on December 13, 2019, and December 15, 2020.

DATES:

Comments. Written comments must be received on or before March 13, 2023.

Public Hearing. EPA plans to hold one public hearing concerning the proposed rule in Fairbanks, Alaska. The date, time and location will be announced separately.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2022–0115, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matthew Jentgen, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, (206) 553–0340, *jentgen.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to EPA.

Table of Contents

I. Background

In 2009, EPA designated a portion of the Fairbanks North Star Borough as ''nonattainment'' for the 2006 24-hour $PM_{2.5}$ NAAQS, which is set at the level of 35 micrograms per cubic meter (μg/m^3) (Fairbanks $PM_{2.5}$ Nonattainment Area) (74 FR 58688, November 13, 2009).[1] Effective July 2, 2014, EPA classified the area as ''Moderate'' (79 FR 31566, June 2, 2014). Subsequently, Alaska submitted, and EPA approved, a plan to meet Moderate nonattainment area requirements (82 FR 42457, September 8, 2017) (''Fairbanks Moderate Plan'').

On May 10, 2017, EPA determined that the Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS in the area by the outermost statutory Moderate area attainment date of December 31, 2015 (82 FR 21711). As a result, the Fairbanks $PM_{2.5}$ Nonattainment Area was reclassified as a ''Serious'' nonattainment area by operation of law.

Upon reclassification as a Serious $PM_{2.5}$ nonattainment area, the State was required to submit a Serious area attainment plan satisfying the requirements of CAA sections 172, 189(b), and 189(c) and 40 CFR 51.1003(b). In accordance with CAA section 188(c)(2), the outermost attainment date for a Serious area is no later than the end of the tenth calendar year following designation (*i.e.,* December 31, 2019).

Alaska submitted a plan to address the Serious $PM_{2.5}$ nonattainment area requirements on December 13, 2019 (Fairbanks Serious Plan).[2] Along with the required planning elements, the Fairbanks Serious Plan includes more stringent performance and operating requirements for residential and commercial heating devices, new regulations for wood sellers, and some requirements for stationary sources in the nonattainment area. The Fairbanks Serious Plan is comprised of revisions to Title 18, Chapter 50, of the Alaska Administrative Code (18 AAC 50) and the State Air Quality Control Plan, adopted and incorporated by reference into State law at 18 AAC 50.030(a).[3] On January 9, 2020, in accordance with CAA section 110(k)(1)(B), EPA determined that the Fairbanks Serious

[1] See 40 CFR 81.302.

[2] Alaska SIP revision submitted October 25, 2018, to address the nonattainment NSR element for the Fairbanks Serious area, among other things. EPA approved as meeting the nonattainment NSR element for the Serious Plan on August 29, 2019 (84 FR 45419).

[3] We note that 18 AAC 50.030(a) is not submitted, rather Alaska submits the adopted provisions separately for EPA approval.

Plan was administratively and technically complete (85 FR 7760, February 11, 2020).

Within the Fairbanks Serious Plan, the State sought an extension of the otherwise applicable attainment date through CAA section 188(e). On September 2, 2020, EPA determined that the area failed to attain by the Serious area attainment date and denied the State's Serious area attainment date extension request (85 FR 54509). As a result, Alaska was required to submit a revised SIP submission to meet both the Serious area attainment plan requirements and the additional CAA requirements set forth in CAA section 189(d) by December 31, 2020.[4] Alaska submitted the revised plan on December 15, 2020 (Fairbanks 189(d) Plan). The Fairbanks 189(d) Plan updated a number of chapters of the State Air Quality Control Plan (*i.e.,* narrative portions of the SIP), adopted and incorporated by reference into State law at 18 AAC 50.030(a). Prior to EPA taking action to approve or disapprove the Fairbanks Serious Plan, Alaska withdrew and replaced several chapters of the Fairbanks Serious Plan with the Fairbanks 189(d) Plan submission.[5] In this proposed action, EPA is not proposing to act on the withdrawn elements of the prior Fairbanks Serious Plan, only those elements that remain as revised by Alaska in the Fairbanks 189(d) Plan.

On September 24, 2021, EPA approved as meeting the Serious area planning requirements the 2013 base year emissions inventory and the $PM_{2.5}$ precursor demonstration elements of the Fairbanks Serious Plan (86 FR 52997). In the same action, EPA approved other plan components as SIP strengthening, including (1) the updated Fairbanks Emergency Episode Plan[6] that the State adopted on November 18, 2020 and submitted on December 15, 2020; and (2) emission control measures included in the SIP submissions on October 25, 2018 and November 28, 2018 (in addition to the December 13, 2019 submission).[7] EPA did not determine as part of the September 24, 2021, approval whether these SIP strengthening components met specific nonattainment plan requirements, including control strategy requirements in CAA section 189 and 40 CFR 51.1010 or the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014. EPA's proposed determination on whether these components meet the nonattainment plan requirements is contained in this document.

Alaska's air quality monitoring network for the Fairbanks $PM_{2.5}$ Nonattainment Area has included four regulatory monitor site locations. Table 1 in this document includes the site names, identification number, monitor data, and design values for the $PM_{2.5}$ monitor site locations in Fairbanks. With EPA approval, the State discontinued the monitor location at the State Office Building and established the A Street monitor as a monitor location in 2019. Alaska established the A Street monitor location as a State or Local Air Monitoring Station (SLAMS) $PM_{2.5}$ monitoring station to characterize $PM_{2.5}$ concentrations in the City of Fairbanks. The Hurst Road monitor measures expected maximum concentrations for the nonattainment area.[8] We note Alaska flagged monitor data in 2019 influenced by wildfire smoke. We discuss in section III.3 of this document how Alaska's demonstration was considered for attainment modeling, but this wildfire-influenced data in 2019 was not regulatory significant under 40 CFR 50.14(a), so the monitor data has not been excluded from the official design value in EPA's Air Quality System (AQS).[9]

TABLE 1—FAIRBANKS $PM_{2.5}$ MONITORING LOCATIONS AND RECENT SITE-LEVEL DESIGN VALUES

Local site name	Site location	AQS ID	98th percentile ($\mu g/m^3$)			2019–2021 24-hour design value **
			2019 **	2020	2021	
Hurst Road *	3288 Hurst Road, North Pole	02–090–0035	78.3	71.4	65.5	72
A Street	397 Hamilton Ave., Fairbanks	02–090–0040	*** 34.1	36.1	*** 29.6	*** 33
NCore	809 Pioneer Road, Fairbanks	02–090–0034	60.0	26.6	27.5	38
State Office Building	675 7th Avenue, Fairbanks	02–090–0010	*** 34.7	n/a	n/a	*** 35

* Monitor location previously referred to as North Pole Fire Station.
** Data in this table includes state-flagged monitor days in 2019 that were influenced by wildfires.
*** Incomplete monitor data and/or invalid 3-year design value. In July 2019, Alaska shut down the regulatory $PM_{2.5}$ monitor at the State Office Building and established a new maximum impact $PM_{2.5}$ monitoring site at the A Street location. Due to data issues in 2021, an official 98th percentile measurement for A Street could not be calculated.
Source: EPA 2021 AQS Design Value Report.

A. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in

[4] 40 CFR 51.1003(c).

[5] See SIP submission cover letter, submitted by Alaska Department of Environmental Conservation (ADEC) Commissioner Jason Brune to EPA Regional Administrator, Chris Hladick, on December 15, 2020.

[6] State Air Quality Control Plan, Vol II, III.D.7.12 (*i.e.,* Alaska's planning chapter related to air quality forecasting and curtailment levels).

[7] For a description of the specific control measures addressed across the State's SIP submissions, see 86 FR 52997, September 24, 2021.

[8] For further details of the air quality monitoring network in the Fairbanks $PM_{2.5}$ Nonattainment Area, EPA's approval letters of Alaska's Annual Monitoring Network Plans for each year between 2019 to 2022 are included in the docket for this action.

[9] Alaska Department of Environmental Conservation. (April 14, 2021). *Exceptional Events Waiver Request, For Exceptional $PM_{2.5}$ Events Between May 26, and July 26, 2019, in the Fairbanks North Star Borough, Alaska.* Alaska Department of Environmental Conservation, Air Quality Division

underserved communities in the Fairbanks Nonattainment Area and to better understand the context of our proposed action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan on these communities, we conducted a screening-level analysis using EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[10]

There are 12 environmental justice indices available on EJSCREEN,[11] each index combines demographic factors with a single environmental factor. Although the EJSCREEN indices for $PM_{2.5}$ and Ozone are not available for Fairbanks, Alaska, we note that the Fairbanks Nonattainment Area has some of the highest $PM_{2.5}$ concentrations in the country and has been designated a $PM_{2.5}$ nonattainment area since 2009. Residents in Fairbanks and North Pole have been subject to a high pollution burden for many years. Other health and socioeconomic indices, identified in EJSCREEN, that are impacted by elevated $PM_{2.5}$ concentrations include: low life expectancy (95–100 percentile) and asthma (90–95 percentile) in an area south of downtown Fairbanks and population under age 5 (95–100 percentile) in various areas in Fairbanks and North Pole. Most of Alaska, including the Fairbanks area, is considered ''medically underserved.'' [12]

A review of other environmental justice indices in EJSCREEN for the cities of Fairbanks, AK and North Pole, AK are below the 80th percentile, with some areas around downtown Fairbanks in the 80–90th percentile for the following indices: Superfund proximity, Hazardous waste proximity, Underground storage tanks. No indices are above the 90th percentile for the Fairbanks Nonattainment Area. EJSCREEN reports for Fairbanks and North Pole are included in the docket for this action.

As discussed in EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[13] Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.[14]

If EPA were to finalize the proposed disapprovals described in section III of this proposed rulemaking, Alaska would be required to submit a plan revision for the Fairbanks Nonattainment Area to address the identified deficiencies. In addition, as summarized in section IV of this proposed rulemaking, such final action would trigger clocks for the Fairbanks Nonattainment Area for offset sanctions 18 months after the final rule effective date, highway funding sanctions six months after the offset sanctions, and the obligation for EPA to promulgate a Federal implementation plan (FIP) within two years of the final rule effective date. Alaska's expeditious submission of plan revisions that correct the deficiencies identified in this document will ensure the plan meets CAA requirements, and the measures in the plan when implemented achieves attainment as expeditiously as practicable. And in doing so, the plan revisions address harmful and disproportionate health and environmental effects on underserved and overburdened populations, consistent with the principles of environmental justice.

II. Clean Air Act Requirements for $PM_{2.5}$ Serious Area Plans and for $PM_{2.5}$ Serious Areas That Fail To Attain

A. Requirements for $PM_{2.5}$ Serious Area Plans

On August 24, 2016, EPA promulgated the final rule entitled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' ($PM_{2.5}$ SIP Requirements Rule).[15] The $PM_{2.5}$ SIP Requirements Rule is codified at 40 CFR part 51, subpart Z. The $PM_{2.5}$ SIP Requirements Rule establishes regulatory requirements and provides interpretive guidance on the statutory SIP requirements that apply to states with areas designated nonattainment for the $PM_{2.5}$ standards. Because this action addresses planning requirements for Serious nonattainment areas and the planning requirements under CAA section 189(d) for Serious nonattainment areas that failed to attain by the attainment date, both planning requirements will be discussed here.

Upon reclassification of a Moderate nonattainment area as a Serious nonattainment area under subpart 4 of part D, title I of the CAA, the Act requires the State to submit a Serious area nonattainment plan that addresses specific requirements.[16] In accordance with subpart 4 of part D, title I of the CAA and the $PM_{2.5}$ SIP Requirements Rule at 40 CFR 51.1003(b), Serious area nonattainment plans must address the following requirements:

1. Base year emissions inventory meeting the requirements of CAA section 172(c)(3) [17] and 40 CFR 51.1008(b)(1);

2. Attainment projected emissions inventory meeting the requirements of CAA section 172(c)(1) [18] and 40 CFR 51.1008(b)(2);

3. Serious area nonattainment plan control strategy meeting the requirements of CAA section 189(b)(1)(B) [19] and 40 CFR 51.1010, including provisions to assure that the best available control measures (BACM) and best available control technologies (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented no later than four years after the area is reclassified (CAA section 189(b)(1)(B) [20]);

4. Attainment demonstration and modeling meeting the requirements of CAA sections 188(c)(2) and 189(b)(1)(A) [21] and 40 CFR 51.1011;

5. Reasonable further progress (RFP) provisions meeting the requirements of CAA section 172(c)(2) [22] and 40 CFR 51.1012;

6. Quantitative milestones meeting the requirements of CAA section 189(c) [23] and 40 CFR 51.1013;

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[10] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.*

[11] Environmental indices include: particulate matter $PM_{2.5}$; Ozone; Diesel particulate matter; Air Toxics cancer risk; Air toxics respiratory hazard index; Traffic proximity and volume; Lead paint; Superfund proximity; Risk management plan (RMP) facility proximity; Hazardous waste proximity; Underground storage tanks (UST) and leaking UST (LUST); and Wastewater discharge.

[12] Medically Underserved Areas are defined by the Health Resources and Services Administration as geographic areas with a lack of access to primary care services. For more information see: *https://bhw.hrsa.gov/workforce-shortage-areas/shortage-designation#mups.*

[13] U.S. Environmental Protection Agency. (June 2016). *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.* Section 4.

[14] *Id.* at section 4.1.

[15] 81 FR 58010, August 24, 2016. Prior to promulgating the $PM_{2.5}$ SIP Requirements Rule, EPA provided its interpretations of the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble''); (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (''General Preamble Supplement''); and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble Addendum'').

[16] CAA section 189(b), 42 U.S.C. 7513a(b); *see also* 81 FR 58010, at pp. 58074–58075, August 24, 2016.

[17] 42 U.S.C. 7502(c)(3).

[18] 42 U.S.C. 7502(c)(1).

[19] 42 U.S.C. 7513a(b)(1)(B).

[20] *Id.*

[21] 42 U.S.C. 7513(c)(2) and 7513a(b)(1)(A).

[22] 42 U.S.C. 7502(c)(2).

[23] 42 U.S.C. 7513a(c).

7. An evaluation by the state of sources of all four $PM_{2.5}$ precursors for regulation, and implementation of controls on all such precursors, unless the state provides an adequate demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to $PM_{2.5}$ levels that exceed the standard; [24]

8. Contingency measures meeting the requirements of CAA section 172(c)(9) [25] and 40 CFR 51.1014; and

9. Nonattainment new source review provisions meeting the requirements of CAA section 189(b)(3) and 40 CFR 51.165.

In the Serious area nonattainment plan, a state must also satisfy the requirements for the Moderate area plan in CAA section 189(a), to the extent the state has not already met those requirements in the Moderate area plan submitted for the area (see CAA section 189(b)(1), 40 CFR 51.1003(b), and 81 FR 58010, August 24, 2016, at page 58075). In addition, the Serious area nonattainment plan must meet the general requirements applicable to all SIP submissions under CAA section 110, including the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding, and authority under CAA section 110(a)(2)(E), and the requirements concerning enforcement provisions in CAA section 110(a)(2)(C).

B. Requirements for $PM_{2.5}$ Serious Areas That Fail To Attain

In the event that a Serious area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, CAA section 189(d) [26] requires that ''the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the . . . standard . . .'' The attainment plan required under CAA section 189(d) must, among other things, demonstrate expeditious attainment of the NAAQS within the time period provided under CAA section 179(d)(3) [27] and provide for annual reductions in emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment.[28] In addition to the requirement to submit control measures providing for a five percent reduction in emissions of certain pollutants on an annual basis, EPA interprets CAA section 189(d) as requiring a state to submit an attainment plan that includes the same basic statutory plan elements that are required for other attainment plans. Specifically, a state must submit to EPA its plan to meet the requirements of CAA section 189(d) in the form of a complete attainment plan submission that includes the following elements: [29]

1. Base year emissions inventory meeting the requirements of CAA section 172(c)(3) [30] and 40 CFR 51.1008(c)(1);

2. Attainment projected emissions inventory meeting the requirements of CAA section 172(c)(1) [31] and 40 CFR 51.1008(c)(2);

3. Unless previously met, a Serious area nonattainment plan control strategy that ensures that best available control measures (BACM), including best available control technologies (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented in the area (CAA section 189(b)(1)(B) [32] and 40 CFR 51.1010(a)).

4. Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and Most Stringent Measures (MSM) [33] (if applicable)) that provide for attainment of the NAAQS as expeditiously as practicable and, from the date of such submission until attainment, demonstrate that the plan will at a minimum achieve an annual five percent reduction in emission of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor from the most recent emissions inventory for the area. The state must reconsider and reassess any measures previously rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area. 40 CFR 51.1010(c).

5. Attainment demonstration and modeling meeting the requirements of CAA sections 188(c)(2) and 189(b)(1)(A) [34] and 40 CFR 51.1011;

6. Reasonable further progress (RFP) provisions meeting the requirements of CAA section 172(c)(2) [35] and 40 CFR 51.1012;

7. Quantitative milestones meeting the requirements of CAA section 189(c) [36] and 40 CFR 51.1013;

8. An evaluation by the state of sources of all four $PM_{2.5}$ precursors for regulation, and implementation of controls on all such precursors, unless the state provides an adequate demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to $PM_{2.5}$ levels that exceed the standard; [37]

9. Contingency measures meeting the requirements of CAA section 172(c)(9) [38] and 40 CFR 51.1014; and

10. Nonattainment new source review provisions meeting the requirements of CAA section 189(b)(3) [39] and 40 CFR 51.165.

C. Combined Requirements for $PM_{2.5}$ Serious Areas and Serious Areas That Fail To Attain

On September 2, 2020, EPA determined that the Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the Serious area attainment date and denied the State's Serious area attainment date extension request (85 FR 54509). This action triggered the obligation for the State to make a new SIP submission to meet the requirements laid out in Section II.B of this document, including submission of a new plan containing all the elements in 40 CFR 51.1003(c). EPA's determination that Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain the NAAQS did not, however, nullify the State's obligation to meet the still outstanding requirements for $PM_{2.5}$ Serious areas laid out in Section II.A, including the requirement to adopt and submit a plan containing all the elements in 40 CFR 51.1003(b). Moreover, a result of the determination of failure to attain was to require the State to make a SIP submission meeting the requirements of CAA section 189(d) and providing for attainment by a later attainment date. Because CAA section 189(d) does not itself supply a specific date, EPA interprets the CAA to impose the attainment date requirements of CAA section 172 and 179, and as

[24] CAA section 189(e), 42 U.S.C. 7513a(e) and 40 CFR 51.1006, 51.1010.

[25] 42 U.S.C. 7502(c)(9).

[26] 42 U.S.C. 7513a(d).

[27] 42 U.S.C. 7509(d)(3).

[28] 81 FR 58010, at page 58098.

[29] 40 CFR 51.1003(c)(1).

[30] 42 U.S.C. 7502(c)(3).

[31] 42 U.S.C. 7502(c)(1).

[32] 42 U.S.C. 7513a(b)(1)(B).

[33] MSM is applicable if EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks $PM_{2.5}$ Nonattainment Area. Therefore, MSM is not applicable to the Fairbanks Serious Plan or Fairbanks 189(d) Plan.

[34] 42 U.S.C. 7513(c)(2) and 7513a(b)(1)(A).

[35] 42 U.S.C. 7502(c)(2).

[36] 42 U.S.C. 7513a(c).

[37] 40 CFR 51.1006.

[38] 42 U.S.C. 7502(c)(9).

[39] 42 U.S.C. 7513a(b)(3).

interpreted in 40 CFR 51.1004(a)(3), rather than the date imposed in CAA section 182(c)(2) and as interpreted in 40 CFR 51.1004(a)(2).

Consistent with the deadlines laid out in the CAA, Serious area plans are intended to be submitted and approved or disapproved well before the Serious area attainment date.[40] The Serious plan must be designed to achieve attainment as expeditiously as practicable, but no later than the outermost statutory attainment date, which is the end of the tenth calendar year following the area's designation to nonattainment.[41] If implementation of the Serious Plan fails to achieve attainment by the Serious area attainment date, the state must submit a new plan meeting the requirements for Serious areas that fail to attain in CAA section 189(d).[42] The state must design this new CAA section 189(d)plan to achieve attainment as expeditiously as practicable, but no later than the deadlines in CAA sections 172 and 179.[43] Thus, the CAA requires states to adopt and implement a plan meeting the requirement of CAA section 189(d) only after adopting and implementing a fully-approved Serious area plan.

Accordingly, the CAA does not contain provisions that address precisely how a state should meet all of the planning requirements for a Serious nonattainment area, after such area has already failed to attain the NAAQS, but before the state has met all of the planning requirements for Serious nonattainment areas. By extension, the CAA does not account for potential conflicts between the required plan provisions for Serious area plans and Section 189(d) plans, particularly with respect to the attainment projected inventory, attainment demonstration, RFP, and quantitative milestone (QM) plan provisions. These elements are required for all $PM_{2.5}$ nonattainment plans and are dependent on a single projected attainment date that complies with the statutory requirements governing the area. Thus, in the event that a state is obligated to submit both a Serious area plan and a Section 189(d) plan, a conflict arises between the applicable attainment date by which states should structure these plan provisions and against which EPA should evaluate them. Such conflict exists here.

EPA acknowledges that the complicated series of events and chronology in this situation make it more difficult to evaluate the State's remaining Serious area plan obligations and new section 189(d) plan obligations. Alaska submitted the Serious Area Plan on December 13, 2019, 18 days before the then-applicable attainment date of December 31, 2019. This plan included a request to extend the attainment date from December 31, 2019 to December 31, 2024, pursuant to CAA section 188(e), which EPA denied.[44] EPA also has not fully approved this Plan. Notably, EPA has not approved the attainment projected inventory, attainment demonstration, RFP, and QM plan provisions of the Serious Area Plan submitted on December 13, 2019.

As discussed in this section, on September 2, 2020, EPA determined that the area failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2019. As a result, the attainment projected inventory, attainment demonstration, RFP, and QM provisions of the December 13, 2019, Serious Area Plan submission did not meet CAA requirements for Serious areas. Moreover, no revisions to these plan provisions could satisfy the Serious area planning requirements because the Serious area attainment date has already passed. Alaska subsequently withdrew these plan provisions and replaced them with the submission of the Fairbanks 189(d) Plan and structured the new plan provisions around the applicable attainment date for Serious areas that fail to attain.

EPA now needs to take action on the nonattainment plan SIP submissions for the Fairbanks Nonattainment Area that are currently before the agency in a way that is logical and most consistent with the statutory and regulatory requirements. Given the impossibility of the State now submitting a Serious area plan designed to achieve an attainment date that has already passed and that the applicable attainment date for the Fairbanks Nonattainment Area is now governed by CAA sections 172 and 179 and 40 CFR 51.1004(a)(3), EPA proposes that it should evaluate any previously unmet Serious area planning obligations based on the current, applicable attainment date under CAA section 189(d), and not the original Serious area attainment date.[45]

Thus, the combined planning requirements EPA is evaluating as part of the Fairbanks Serious Plan and Fairbanks 189(d) Plan submissions are included in Table 2:

TABLE 2—COMBINED FAIRBANKS SERIOUS PLAN AND FAIRBANKS 189(d) PLAN REQUIREMENTS

[CAA planning requirements for $PM_{2.5}$ serious areas and areas that fail to attain]

Description	Legal/ regulatory requirement
Base year emissions inventory for Serious areas subject to CAA section 189(b) *	CAA section 172(c)(3); 40 CFR 51.1008(b)(1).
Base year emissions inventory for areas subject to CAA section 189(d)	CAA section 172(c)(3); 40 CFR 51.1008(c)(1).
Attainment projected emissions inventory	CAA section 172(c)(1); 40 CFR 51.1008(c)(2).
Serious area nonattainment plan control strategy that ensures that best available control measures (BACM), including best available control technologies (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented in the area.	CAA section 189(b)(1)(B); 40 CFR 51.1010(a).
Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and Most Stringent Measures (MSM)[46] (if applicable)) that provide for attainment of the NAAQS as expeditiously as practicable and, from the date of such submission until attainment, demonstrate that the plan will at a minimum achieve an annual five percent reduction in emission of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor. The state must reconsider and reassess any measures previously rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area.	CAA section 189(d);40 CFR 51.1010(c).

[40] CAA section 189(b)(2) and 40 CFR 51.1003.

[41] CAA section 189(b)(1) and 40 CFR 51.1004(a)(2).

[42] CAA section 189(d) and 40 CFR 51.1003(c).

[43] CAA sections 172 and 179 and 40 CFR 51.1004(a)(3)

[44] 85 FR 54509

[45] 86 FR 53150, September 24, 2021, at p. 53155.

TABLE 2—COMBINED FAIRBANKS SERIOUS PLAN AND FAIRBANKS 189(d) PLAN REQUIREMENTS—Continued

[CAA planning requirements for $PM_{2.5}$ serious areas and areas that fail to attain]

Description	Legal/ regulatory requirement
Attainment demonstration and modeling	CAA sections 188(c)(2) and 189(b)(1)(A); 40 CFR 51.1003(c) and 51.1011.
Reasonable further progress (RFP) provisions	CAA section 172(c)(2); 40 CFR 51.1012.
Quantitative milestones	CAA section 189(c); 40 CFR 51.1013.
An adequate evaluation by the state of sources of all four $PM_{2.5}$ precursors for regulation, and implementation of controls on all such precursors, unless the state provides a demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to $PM_{2.5}$ levels that exceed the standard.**	CAA section 189(e);40 CFR 51.1006.
Contingency measures applicable to Serious areas subject to CAA section 189(b)	CAA section 172(c)(9); 40 CFR 51.1014.
Contingency measures applicable to Serious areas subject to CAA section 189(d)	CAA section 172(c)(9); 40 CFR 51.1014.
Nonattainment new source review provisions	CAA section 189(b)(3); 40 CFR 51.165.

* EPA finalized approval of this requirement on September 24, 2021 (86 FR 52997).
** EPA finalized approval of this requirement applicable to Serious areas subject to CAA section 189(b) on September 24, 2021 (86 FR 52997).

As noted in section I of this document, EPA approved parts of the Fairbanks Serious Plan as meeting the base year emission inventory requirements, $PM_{2.5}$ precursor demonstration requirements, and the nonattainment new source review provisions (86 FR 52997, September 24, 2021; *see also* 84 FR 45419, August 29, 2019). Therefore, the ensuing evaluation focuses on the remaining statutory and regulatory requirements applicable to Serious nonattainment plan provisions. Additionally, we are also evaluating whether the December 15, 2020, submission meets the additional planning requirements of a revised Serious area attainment plan under CAA section 189(d) and 40 CFR 51.1003(c).

III. Review of the Fairbanks Serious Plan and Fairbanks 189(d) Plan

A. Emission Inventories

1. Statutory and Regulatory Requirements

CAA section 172(c)(3) requires that states submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area as part of a nonattainment plan for such area. The regulation at 40 CFR 51.1008 contains the requirements for emission inventories.[47] EPA has also issued additional guidance concerning emissions inventories for $PM_{2.5}$ nonattainment areas.[48] In accordance with 40 CFR 51.1008, the attainment plan must include a base year emissions inventory and attainment projected emissions inventory.

The base year emissions inventory for a Serious $PM_{2.5}$ nonattainment area must be one of the three years for which EPA used monitored data to reclassify the area to Serious, or another technically appropriate year justified by the state in its Serious area nonattainment plan SIP submission.[49] Similarly, the base year emission inventory for a nonattainment area subject to CAA section 189(d) must be one of the three years for which monitored data were used by EPA to determine the area failed to attain by the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, or another technically appropriate year justified by the state in its Serious area nonattainment plan SIP submission.[50] The base year emissions inventory should provide a state's best estimate of actual emissions from all sources, *i.e.,* all emissions that contribute to the formation of $PM_{2.5}$. The emissions must be either annual total emissions, average-season day emissions, or both, as appropriate for the relevant annual versus 24-hour $PM_{2.5}$ NAAQS. The state must include a rationale for providing annual or seasonal emission inventories, and justification for the period used for any seasonal emissions calculations.[51]

According to 40 CFR 51.1008, the Serious Plan and 189(d) Plan must include an attainment projected inventory for the nonattainment area. The year of the projected inventory shall be the most expeditious year for which projected emissions show modeled $PM_{2.5}$ concentrations below the level of the NAAQS. The emissions values shall be projected emissions of the same sources included in the base year inventory for the nonattainment area (*i.e.,* those only within the nonattainment area) and any new sources. The state shall include in this inventory projected emissions growth and contraction from both controls and other causes during the relevant period. The temporal period of emissions shall be the same temporal period (annual, average-season-day, or both) as the base year inventory for the nonattainment area. The same sources reported as point sources in the base year inventory for the nonattainment area shall be included as point sources in the attainment projected inventory for the nonattainment area. Stationary nonpoint and mobile source projected emissions shall be provided using the same detail

[46] MSM is applicable if EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks Serious Nonattainment Area.

[47] 81 FR 58010, August 24, 2016, at pp. 58078–58079.

[48] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA, May 2017 (''Emissions Inventory Guidance''), available at: *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

[49] 40 CFR 51.1008(b)(1).

[50] 40 CFR 51.1008(c)(1).

[51] 40 CFR 51.1008.

(*e.g.,* state, county, and process codes) as the base year inventory for the nonattainment area. The same detail of the emissions included shall be consistent with the level of detail and data elements as in the base year inventory for the nonattainment area (*i.e.,* as required by 40 CFR part 51, subpart A). Consistent with the base year inventory for the nonattainment area, the inventory shall include direct $PM_{2.5}$ emissions, separately reported $PM_{2.5}$ filterable and condensable emissions, and emissions of the scientific $PM_{2.5}$ precursors, including precursors that are not significant $PM_{2.5}$ plan precursors pursuant to a precursor demonstration under 40 CFR 51.1006.

A state's SIP submission must include documentation explaining how it calculated emissions data for the inventory and be consistent with the data elements required by 40 CFR part 51, subpart A. In estimating mobile source emissions, a state must use the latest emissions models and planning assumptions available at the time the SIP is developed.[52] States are also required to use EPA's ''Compilation of Air Pollutant Emission Factors'' (''AP–42'') road dust method for calculating re-entrained road dust emissions from paved roads.[53] [54]

2. Summary of State's Submission

The base year planning emissions inventory for direct $PM_{2.5}$ and $PM_{2.5}$ precursors (nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3)) and the documentation for the inventory for the Fairbanks $PM_{2.5}$ Nonattainment Area are located in *State Air Quality Control Plan,* Chapter III.D.7.6 (''Emissions Inventory Data'') and Appendix III.D.7.6 of the Fairbanks 189(d) Plan.[55]

The State developed the inventory using data sources and emission calculation methodologies from the approved Fairbanks Serious Plan, 2013 base year emissions inventory, as its starting point and then updated the emissions totals based on additional source and activity data collected since preparation of that inventory. The State based the 2019 base year inventory included in the Fairbanks 189(d) Plan on historical source activity data in calendar year 2019 for all source sectors. EPA's MOVES2014b model was used for on-road vehicles (including effects of the on-going Federal Motor Vehicle Control Program and Tier 3 fuel standards, coupled with Alaska Ultra Low Sulfur Diesel standards) and non-road vehicles and equipment (including the effect of Federal fuel and Alaska ultra-low sulfur diesel (ULSD) programs for non-road fuel).

TABLE 3—2019 BASELINE EPISODE AVERAGE DAILY EMISSIONS (TONS PER DAY) BY SOURCE SECTOR

Source sector	2019 Base year emissions inventory (tons/day)				
	$PM_{2.5}$	NO_X	SO_2	VOC	NH_3
Point Sources	0.57	10.31	5.68	0.03	0.073
Area, Space Heating	1.91	2.43	3.88	8.60	0.132
Area, Space Heat, Wood	1.77	0.39	0.16	8.38	0.086
Area, Space Heat, Oil	0.06	1.82	3.62	0.10	0.004
Area, Space Heat, Coal	0.07	0.05	0.09	0.11	0.014
Area, Space Heat, Other	0.01	0.17	0.02	0.01	0.029
Area, Other	0.22	0.36	0.03	2.10	0.046
On-Road Mobile	0.22	1.70	0.01	3.83	0.040
Non-Road Mobile	0.26	0.94	5.41	4.16	0.002
Totals	3.17	15.73	15.01	18.72	0.293

Source: State Air Quality Control Plan, Vol II, III.D.7.6, Table 7.6–7

The State focused on what it identified as the three most important source types in the airshed: stationary point sources; space heating area (nonpoint) sources; and on-road mobile sources. At the time the State developed the emissions inventory, these three source types were the major contributors to both direct $PM_{2.5}$ emissions as well as emissions of $PM_{2.5}$ precursor pollutants gases SO_2, NO_X, VOC, and NH_3 within the nonattainment area.

The emission sources with the highest relative direct $PM_{2.5}$ contributions were:

- 55.8% for wood-fired space heating;
- 17.9% stationary sources;
- 8.1% non-road mobile; and
- 6.8% on-road mobile.

The emission sources with the highest relative SO_2 contributions were:

- 37.9% stationary sources;
- 36% non-road mobile; and
- 24.1% oil-fired space heating.

The emission sources with the highest relative NO_X contributions were:

- 65.5% stationary sources;
- 11.6% oil-fired space heating;
- 10.8% on-road mobile; and
- 6% non-road mobile.

The emission sources with the highest relative VOC contributions were:

- 44.8% for wood-fired space heating;
- 22.2% non-road mobile; and
- 20.5% on-road mobile.

The emission sources with the highest relative NH_3 contributions were:

- 29.3% for wood-fired space heating;
- 25% stationary sources;
- 15.8% other area sources; and
- 13.5% on-road mobile.[56]

EPA's technical evaluation of Alaska's Emissions Inventory planning sections is included in the docket for this action.[57]

[52] See CAA section 172(c)(3).

[53] EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emission tests results. 76 FR 6328 (February 4, 2011).

[54] AP–42 has been published since 1972 as the primary source of EPA's emission factor information. *https://www.epa.gov/air-emissionsfactors-and-quantification/ap-42-compilation-airemissions-factors.* It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

[55] Adopted November 18, 2020.

[56] State Air Quality Control Plan, Vol II, III.D.7.6, Figures 7.6–8—7.6–12.

[57] Kotchenruther, B. (August 24, 2022). *Technical support document for Alaska Department of Environmental Conservation's amendments to: State Air Quality Control Plan, Emission Inventory Data (version adopted November 18, 2020).* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Sciences Division.

a. 2024 Attainment Projected Inventory

The Fairbanks 189(d) Plan includes an attainment projected inventory for 2024.[58] Previously Alaska stated that attainment by 2024 was not practicable and estimated that 2029 was the most expeditious attainment date.[59] EPA did not take action on the attainment projected emissions inventory submitted as part of the Fairbanks Serious Plan (see 86 FR 52997, September 24, 2021). Alaska has subsequently withdrawn and replaced the applicable planning chapter from that SIP submission with a revised attainment projected emission inventory included in the Fairbanks 189(d) Plan. Consistent with these statements, EPA is proposing to evaluate any previously unmet Serious area planning obligations based on the current, applicable attainment date appropriate under CAA section 189(d) and not the original Serious area attainment date.

Thus, EPA views the 2024 attainment projected inventory included in the Fairbanks 189(d) Plan as the applicable projected inventory, which is based on the 2019 base year inventory of actual emissions. The 2024 emissions projection follows two steps. First, the State projected the 2019 base year emissions to 2024 based on forecasted source activity changes coupled with changes in emission factors due to already adopted Federal, state, and local control measures that existed prior to the development of the Fairbanks 189(d) Plan. Second, the State modified these initial 2024 emissions projections based on the suite of additional emission reductions from measures the State will be implementing under the Fairbanks 189(d) Plan.

The State forecasted emissions reductions from the ongoing Wood Stove Change Out Program[60] and the Oil-To-Gas Conversion Program[61] in Fairbanks beyond 2019 based on an analysis of the historical change out program activity and existing funding available for future changeouts, as well as certifying that no new staffing will be required to handle projected changeouts through 2024. Alaska projected the additional emissions reductions in $PM_{2.5}$ and SO_2 from these measures to be 0.6941 tons per day and 0.0083 tons per day, respectively, in 2024.

The State based emissions reductions for the Solid-Fuel Burning Appliance Curtailment Program[62] in Fairbanks on Alaska's revisions in the Fairbanks 189(d) Plan that increases the stringency of the existing curtailment program. Under the latest regulations, the State lowered the curtailment program's two air quality alert stages to 20 $\mu g/m^3$ and 30 $\mu g/m^3$, respectively, for Stage 1 and Stage 2 alerts (down from 25 $\mu g/m^3$ and 35 $\mu g/m^3$, respectively). In addition, Alaska plans to utilize 2019–2020 Targeted Airshed Grant (TAG) funding to install several dynamic highway message signs, purchase an infrared camera, and expand staffing to increase compliance. As a result, Alaska estimated that the curtailment program compliance rate will increase from 30% in 2019 to 45% by 2024. Alaska projected the additional emissions reductions in $PM_{2.5}$ and SO_2 from these measures to be 0.351 tons per day and –0.058 tons per day, respectively, in 2024 (an increase in SO_2 results from the projected increase in conversions to liquid-fueled heating devices).

The State also incorporated point source SO_2 emissions reductions under the Fairbanks Serious Plan into the 2024 attainment projected inventory. For a detailed summary of the attainment projected inventory, see EPA's Fairbanks Emissions Inventory Technical Support Document in the docket for this action.[63]

3. EPA's Evaluation and Proposed Action

a. 2019 Base Year Emissions Inventory

EPA proposes to find that the 2019 base year emissions inventory meets the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. Calendar year 2019 is an appropriate base year for the Fairbanks 189(d) Plan because it is one of the three years for which EPA used monitored data to determine that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date.[64] The base year emissions inventory is a seasonal inventory, based on two historical meteorological episodes considered by EPA to be representative of the range of meteorological conditions that lead to exceedances of the 24-hour NAAQS. This is an appropriate temporal scope for a base year emissions inventory where anthropogenic exceedances of the 24-hour NAAQS occur exclusively in winter.

The emissions inventory is of actual emissions in 2019, as required in the $PM_{2.5}$ SIP Requirements Rule and guidance.[65] The emissions inventory also includes separate reporting for filterable and condensible $PM_{2.5}$ for the relevant emissions sectors and SCC codes. The base year 2019 emissions inventory, reported as average season day emissions, is based on methodologies used by the State and vetted by EPA in the Fairbanks Moderate and Serious Plans and applied to the new base year of 2019. Therefore, the inventory reports emissions consistent with the Air Emissions Reporting Rule (AERR) and contains the detail and data elements required by 40 CFR part 51, subpart A. For these reasons, we are proposing to approve the 2019 base year emissions inventory in the Fairbanks 189(d) Plan as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008.[66]

b. 2024 Attainment Projected Inventory

EPA proposes to find that the Fairbanks 189(d) Plan does not satisfy the requirement of 40 CFR 51.1008(c)(2) to include an attainment projected emission inventory for the most expeditious attainment date. The Fairbanks 189(d) Plan contains an attainment projected emissions inventory, and Alaska projects attainment by December 31, 2024. The updated State Air Quality Control Plan

[58] State Air Quality Control Plan, Vol II, Chapter III.D.7.9.

[59] The State included an attainment projected emissions inventory in the Fairbanks Serious Plan, submitted on December 13, 2019, which also projected attainment in 2024. However, the Attainment Demonstration chapter in the Fairbanks Serious Plan stated that attainment by 2024 was not practicable. Instead, the State estimated the most expeditious attainment date is 2029. However, Alaska did not identify a 2029 inventory in the Emissions Inventory chapter nor adequately demonstrate that 2029 was the most expeditious attainment date. The State did, however, produce a 2029 inventory for the Reasonable Further Progress plan.

[60] The Woodstove Changeout Program, administered by the Fairbanks North Star Borough Air Quality Program, is primarily funded through EPA's Targeted Airshed Grant, along with local and state funding. The program has received $32 million in total funding since 2010. The program upgrades or removes solid fuel-fired and oil-fired heating devices. Since 2010, the change out program has evolved to ensure the best emission outcomes by narrowing eligibility, and what types of devices may be installed.

[61] Funded and managed by the Fairbanks North Star Borough Air Quality Program, residential oil heating appliances are changed out for natural gas-fired heating devices to support natural gas expansion through conversion of to gas heating appliances. The program has received $2 million in total funding since 2019.

[62] Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, Chapter III.D.7.12; 18 AAC 50.030(a); 18 AAC 50.075(e).

[63] Kotchenruther, B. (August 24, 2022). *Technical support document for Alaska Department of Environmental Conservation's amendments to: State Air Quality Control Plan, Emission Inventory Data (version adopted November 18, 2020).* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Sciences Division.

[64] 85 FR 54509.

[65] 40 CFR 51.1008(a)(1)(ii).

[66] We note that EPA approved as meeting the Serious area planning requirements the 2013 base year emissions inventory on September 24, 2021 (86 FR 52997).

contains the revisions and methodology for the 2024 projected inventory.[67] These chapters supersede the chapters that contain the prior attainment projected inventory. As discussed further in section III.D of this document, regarding the Attainment Demonstration, Alaska's proposed attainment date of 2024 is predicated on a modeling platform that is outdated and lacks the quantitative performance evaluation and speciated information at the air quality monitor (Hurst Road in North Pole) with highest $PM_{2.5}$ concentrations. Alaska is currently in the process of updating the modeling using the latest model. Therefore, December 31, 2024, may not be the most expeditious year for which projected emissions show modeled concentrations below the level of the NAAQS. Moreover, as discussed further in section III.C in this document, the control strategy does not contain all required control measures. Therefore, the attainment projected emissions inventory does not necessarily take into consideration all required emissions reductions, so we propose to disapprove the projected emissions inventory.

B. Pollutants Addressed

1. Statutory and Regulatory Requirements

Under subpart 4 of part D, title I of the CAA and the $PM_{2.5}$ SIP Requirements Rule, each state containing a $PM_{2.5}$ nonattainment area must evaluate all $PM_{2.5}$ precursors for regulation unless, for any given $PM_{2.5}$ precursor, the state demonstrates to the Administrator's satisfaction that such precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the nonattainment area.[68] The provisions of subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified $PM_{2.5}$ precursor. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' [69] EPA has identified SO_2, NO_X, VOCs, and NH_3 as precursors to the formation of $PM_{2.5}$.[70] Accordingly, the attainment plan requirements of part D, title I of the CAA and the $PM_{2.5}$ SIP Requirements Rule apply to emissions of all four precursors and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in CAA section 189(e).

A large number of chemical reactions, often non-linear in nature, can convert gaseous SO_2, NO_X, VOCs, and NH_3 to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[71] Formation of secondary $PM_{2.5}$ also depends on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with particles and with cloud or fog droplets.[72] According to the State, in the Fairbanks Serious Plan, total wintertime $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area are a function of both primary $PM_{2.5}$ emissions and secondary $PM_{2.5}$ formed from precursors (see State Air Quality Control Plan, Vol II, Chapter III.D.7.8, section 7.8.1 of the Fairbanks Serious Plan in the docket for this action).

CAA section 189(e) requires that the control requirements for major stationary sources of direct PM_{10} [73] and $PM_{2.5}$ [74] also apply to major stationary sources of PM_{10} and $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} or $PM_{2.5}$ levels that exceed the standard in the area. CAA section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT), BACM and BACT, Most Stringent Measures (MSM), and New Source Review (NSR) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions). Although section 189(e) explicitly addresses only major stationary sources, EPA interprets this provision as authorizing it also to determine, under appropriate circumstances, that regulation of specific PM_{10} or $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary.[75] For example, under EPA's longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM_{10} precursors in the nonattainment area under CAA section 172(c)(1) and subpart 4,[76] a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{10} or $PM_{2.5}$ levels in the nonattainment area.[77]

Under the $PM_{2.5}$ SIP Requirements Rule, a state may elect to submit to EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS at issue in the nonattainment in the area.[78] If EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, then the state is not required to control emissions of the relevant precursor from existing sources in the attainment plan.[79]

In addition, in May 2019, EPA issued the ''$PM_{2.5}$ Precursor Demonstration Guidance'' (''$PM_{2.5}$ Precursor Guidance''), which provides recommendations to states for analyzing nonattainment area $PM_{2.5}$ emissions and developing such optional precursor demonstrations, consistent with the $PM_{2.5}$ SIP Requirements Rule.[80]

EPA is evaluating both the remaining elements of the Fairbanks Serious Plan before the agency and the Fairbanks 189(d) Plan in accordance with the presumption embodied within subpart 4 that the State must address all $PM_{2.5}$ precursors in the evaluation and implementation of potential control measures, unless the State adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient

[67] State Air Quality Control Plan, Vol. II, Chapter III.D.7.6.7–8.

[68] 40 CFR 51.1006, 51.1010; *See* 81 FR 58010, August 24, 2016, at pp. 58017–58020.

[69] CAA section 302(g).

[70] 81 FR 58010, August 24, 2016, at p. 58015.

[71] ''Air Quality Criteria for Particulate Matter'' (EPA/600/P–99/002aF), EPA, October 2004, Ch. 3.

[72] ''Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter'' (EPA/452/R–12–005), EPA, December 2012), 2–1.

[73] The requirements for attainment plans for the 2006 24-hour $PM_{2.5}$ NAAQS include the general nonattainment area planning requirements in CAA section 172 of title I, part D, subpart 1 and the additional planning requirements specific to particulate matter in CAA sections 188 and 189 of title I, part D, subpart 4. 81 FR 58010, August 24, 2016, at pp. 58012–58014.

[74] The general attainment plan requirements of subpart 1, part D, of Title I of the CAA in addition to the specific requirements in subpart 4, part D, of Title I of the CAA apply to both PM_{10} and $PM_{2.5}$. *See* 81 FR 58010, August 24, 2016, at pp. 58013.

[75] 81 FR 58010, August 24, 2016, at pp. 58018–58019.

[76] General Preamble, 57 FR 13498, April 16, 1992, at pp. 13539–42.

[77] 40 CFR 51.1006. *See also* 81 FR 58010, 58033. Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. *See, e.g.,* Assoc. of Irritated Residents v. EPA, et al., 423 F.3d 989 (9th Cir. 2005).

[78] 40 CFR 51.1006(a)(1).

[79] 40 CFR 51.1006(a)(1).

[80] ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004, May 2019, including Memo dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA.

$PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the nonattainment area. In reviewing any determination by the state to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we considered both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.[81]

2. Summary of State's Submission

On September 24, 2021, EPA approved Alaska's $PM_{2.5}$ precursor demonstration submitted as part of the Fairbanks Serious Plan for purposes of NO_X and VOC emissions as it relates to control measure requirements (86 FR 52997). Alaska included its updated $PM_{2.5}$ precursor analysis in the SIP submission to meet CAA 189(d) requirements.[82] This submission included a new NO_X model run that replaced a quantitative analysis conducted as part of the Fairbanks Serious Plan submission. Because there were no significant changes to the modeling platform during the short time period between the Fairbanks Serious Plan and 189(d) Plan submissions, the State reasoned that the other model runs and precursor analysis from the Fairbanks Serious Plan are still applicable as part of the updated precursor demonstration.

Alaska's precursor demonstration provided both concentration-based and sensitivity-based analyses of precursor contributions to ambient $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area. For VOC emissions, Alaska's demonstration was based on a comprehensive precursor analysis where a baseline model run was compared to a control model run with a 100% reduction of VOC emissions from anthropogenic sources. These results are well below the 1.5 $\mu g/m^3$ significance threshold. For NO_X emissions, Alaska included a baseline model run in the Fairbanks 189(d) Plan evaluating a 50% reduction in NO_X as part of the 189(d) Plan. According to the State, this provides further evidence that NO_X does not contribute significantly to $PM_{2.5}$ formation in the Fairbanks Nonattainment Area. The sensitivity precursor analysis showed that the maximum 24-hour average $PM_{2.5}$ concentrations due to anthropogenic NO_X emissions were less than or equal to 1.22 $\mu g/m^3$ in 2019 for all model grid cells containing regulatory monitors, and therefore were below the 1.5 $\mu g/m^3$ threshold.

These analyses led the State to conclude that SO_2 and NH_3 emissions contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the Fairbanks Nonattainment Area, while NO_X and VOC do not contribute significantly to such exceedances. Consistent with this conclusion, the State focused the control strategy and attainment demonstration on sources of $PM_{2.5}$, SO_2, and NH_3 emissions. A technical summary of Alaska's updated $PM_{2.5}$ precursor demonstration is included in the docket for this action.[83]

Importantly, Alaska's precursor analysis in the 189(d) Plan did not address nonattainment NSR requirements. The State previously made the determination to regulate all four EPA-identified legal precursors to $PM_{2.5}$ in the nonattainment NSR regulations applicable to the Fairbanks $PM_{2.5}$ Nonattainment Area. EPA approved Alaska's October 25, 2018, SIP revision as meeting the nonattainment NSR requirements triggered upon reclassification of the area to Serious (84 FR 45419, August 29, 2019).

3. EPA's Evaluation and Proposed Action

EPA has evaluated the State's precursor demonstration included in the Fairbanks 189(d) Plan consistent with the $PM_{2.5}$ SIP Requirements Rule and the recommendations in the $PM_{2.5}$ Precursor Guidance. Noting that Alaska did not submit a precursor determination for SO_2 and NH_3 emissions,[84] EPA agrees that SO_2 and NH_3 emission sources, therefore, remain subject to control requirements under subparts 1 and 4 of part D, title I of the Act.

EPA proposes to approve the State's demonstration that NO_X and VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 $PM_{2.5}$ NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area for purposes other than NSR program requirements. If EPA finalizes this proposed approval, Alaska would not be required to identify and impose control measures for NO_X and VOC emission sources in Fairbanks other than for NSR purposes or to impose motor vehicle emission budgets for NO_X and VOC emissions. Our proposed approval of Alaska's precursor demonstration does not extend to nonattainment NSR requirements for the area. Alaska previously determined that it was appropriate to regulate NO_X, SO_2, VOCs, and NH_3 as precursors to $PM_{2.5}$ with respect to nonattainment NSR and submitted rule changes to that effect on October 25, 2018. EPA approved the submitted revised program as meeting nonattainment NSR requirements triggered upon reclassification of the Fairbanks $PM_{2.5}$ Nonattainment Area to Serious (84 FR 45419, August 29, 2019).

Regarding the State's analytical approach, EPA proposes to find that the State used appropriate methods and data to evaluate $PM_{2.5}$ formation in the Fairbanks $PM_{2.5}$ Nonattainment Area from precursor emissions. Alaska began with concentration-based analyses for the precursors and proceeded with sensitivity-based analyses if necessary, which is an acceptable progression of analyses under the $PM_{2.5}$ SIP Requirements Rule. The State utilized the appropriate threshold recommended in EPA's guidance (1.5 $\mu g/m^3$) in evaluating the significance of precursor emissions to the formation of 24-hour $PM_{2.5}$ and utilized data from all four monitors in the Fairbanks $PM_{2.5}$ Nonattainment Area (see Table 1 of this document).

Regarding the results of the State's analysis, the concentration-based modeling analysis of VOC emissions demonstrates that anthropogenic VOCs have impacts on $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area that are well below the 1.5 $\mu g/m^3$ significance threshold. Therefore, we propose to concur with the State's conclusion that VOCs are not significant for $PM_{2.5}$ formation in the Fairbanks $PM_{2.5}$ Nonattainment Area.

Further, we propose to find that the weight of evidence presented in the Fairbanks Serious Plan and Fairbanks 189(d) Plan suggests that NO_X emitted from all sources is an insignificant contributor to local $PM_{2.5}$ concentrations. Additional details of EPA's evaluation of Alaska's precursor $PM_{2.5}$ analyses are included in EPA's $PM_{2.5}$ precursor Technical Support Document in the docket for this action.[85]

[81] 40 CFR 51.1006(a)(1)(i) and (ii).

[82] State Air Quality Control Plan, Vol II, Chapter III.D.7.8, section 7.8.14.3.

[83] Briggs and Kotchenruther. (August 24, 2022). *Review of Fairbanks Nonattainment Area Precursor Demonstrations for Volatile Organic Compounds and Nitrogen Oxides in the 2020 State Implementation Plan Submission.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[84] According to Alaska, there is a negligible amount of NH_3 associated with coal-fired boilers, fuel oil-fired turbines or diesel engine emissions and this amount is not in the emissions inventory. *See* State Air Quality Control Plan, Vol II, Chapter III.D.7.7.8.1.

[85] Briggs and Kotchenruther. (August 24, 2022). *Review of Fairbanks Nonattainment Area Precursor Demonstrations for Volatile Organic Compounds and Nitrogen Oxides in the 2020 State Implementation Plan Submission.* U.S.

Continued

C. Control Strategy

1. Statutory and Regulatory Requirements

CAA section 189(b) and 40 CFR 51.1010(a) contain the control measure requirements for Serious areas. CAA section 189(d) and 40 CFR 51.1010(c) contain the control measure requirements for Serious areas that fail to attain. EPA summarizes these statutory and regulatory provisions in this section.

Pursuant to CAA section 189(b) and 40 CFR 51.1010(a), the state must identify, adopt, and implement best available control measures, including best available control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors located in any Serious $PM_{2.5}$ nonattainment area or portion thereof located within the state. This level of control stringency is commonly called ''BACM'' and ''BACT.'' The regulation at 40 CFR 51.1010(a) specifies the requirements states must meet to identify potential control measures and in determining the measures states must include in the control strategy as BACM or BACT for the nonattainment area:

The state must identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area, in accordance with the emissions inventory requirements in 40 CFR 51.1008(b).

The state must identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area. The state must survey other NAAQS nonattainment areas in the U.S. and identify any measures for direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors not previously identified by the state during the development of the Moderate area attainment plan for the area.

The state must identify, adopt, and implement the best available control measures for each emission source. However, the state may demonstrate that any measure identified under 40 CFR 51.1010(a)(2) is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the effective date of designation of the area and may eliminate such whole or partial measure from further consideration. Overall, economic feasibility is a less significant factor in the BACM and BACT determination process.[86] There are considerations for technological feasibility of a potential control measure, where a state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.[87] There are also considerations for economic feasibility of a potential control measure where a state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.[88] In assessing whether a control measure or technology is BACM or BACT, the state must consider emission reduction measures with higher costs per ton compared to the economic feasibility criteria applied in their RACM or RACT analysis.[89] With respect to determining BACT pursuant to CAA section 189(b), EPA expects that states use the top-down BACT analysis process used in the Prevention of Significant Deterioration Program.[90]

Pursuant to CAA section 189(b), a state with a Serious nonattainment area must include provisions to assure that the implementation of BACM and BACT level controls on sources of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors no later than 4 years after the date the area is classified (or reclassified) as a Serious area.

In the preamble to the final $PM_{2.5}$ SIP Requirements Rule, EPA recommended the following 5-Step BACM/BACT selection process states should follow to satisfy the analytical and substantive requirements of 40 CFR 51.1010(a) and CAA section 189(b):[91]

Step 1: Develop a comprehensive inventory of sources and source categories of directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors.

Step 2: Identify potential control measures for all such sources.

Step 3: Determine whether an available control measure or technology is technologically feasible.

Step 4: Determine whether an available control measure or technology is economically feasible.

Step 5: Determine the earliest date by which a control measure or technology can be implemented in whole or in part in the area.

EPA's interprets CAA section 189(b) to require the state to determine what is BACM or BACT for a particular source or source category.[92] EPA's longstanding interpretation of the CAA is that BACM and BACT determinations are to be generally independent of attainment for purposes of implementing the $PM_{2.5}$ NAAQS.[93] EPA interprets the CAA requirement to impose BACM/BACT level control as requiring more emphasis on what controls are the best for the relevant source and whether those controls are feasible rather than on the attainment needs of the area.[94] States also may not decline to evaluate, or to control as necessary, sources or source categories on the basis that they are de minimis.[95]

Subsequently, for a state with a Serious $PM_{2.5}$ nonattainment area that has failed to attain by the applicable attainment date, the state must submit a revised attainment plan with a control strategy that demonstrates that each year the area will achieve at least a 5 percent reduction in emissions of direct $PM_{2.5}$ or a 5 percent reduction in emissions of a $PM_{2.5}$ plan precursor based on the most recent emissions inventory for the area; and that the area will attain the standard as expeditiously as practicable consistent with the attainment date requirements under 40 CFR 51.1004(a)(3).[96] The regulation at 40 CFR 51.1010(c) specifies the following process the state must follow in determining which measures must be included in the control strategy:

The state shall identify all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ precursors in the nonattainment area in accordance with the emissions inventory requirements in 40 CFR 51.1008(b).

The state shall identify all potential control measures to reduce emissions from all sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors in the nonattainment area. For the sources and source categories represented in the emission inventory for the nonattainment area, the state shall identify the most stringent measures for reducing direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors adopted into any SIP or used in practice to control emissions in any state, as applicable.

The state shall also reconsider and reassess any measures previously

Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[86] *Id.*

[87] 40 CFR 51.1010(a)(3)(i); 81 FR 58010, 58084.

[88] 40 CFR 51.1010(a)(3)(ii); 81 FR 58010, 58085.

[89] 81 FR 58010, 58085.

[90] *Id.* 58010, 58080 (''Consistent with past policy, BACT determinations for $PM_{2.5}$ NAAQS implementation are to follow the same process and criteria that are applied to the BACT determination process for the PSD program.'').

[91] 81 FR 58010, 58084–85.

[92] 81 FR 58010, 58081.

[93] Addendum to the General Preamble, 59 FR 41998, 42011 (August 16, 1994); 81 FR 58010, 58081.

[94] *Id.*

[95] *Id.* 58010, 58082.

[96] CAA section 189(d), 42 U.S.C. 7513a(d), and 40 CFR 51.1010(c).

rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area.

Similar to the requirements for Serious area plans, the state may make a demonstration for a 189(d) plan that a measure is not technologically or economically feasible to implement in whole or in part within 5 years or such longer period as EPA may determine is appropriate after EPA's determination that the area failed to attain by the Serious area attainment date and may eliminate such whole or partial measure from further consideration. There are considerations for technological feasibility of a potential control measure, as described under 40 CFR 51.1010(c)(3)(i), where a state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements. There are also considerations for economic feasibility of a potential control measure, under 40 CFR 51.1010(c)(3)(ii), where a state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.

Unless the state has demonstrated that the measure is not technologically or economically feasible, the state shall adopt and implement all potential control measures identified.

Finally, control measures adopted as part of the state's control strategy must be permanent, enforceable as a practical matter, and quantifiable.[97] In order to be enforceable as a practical matter, the state must adopt into the SIP not only the control measure or emission limit itself but also appropriate monitoring, recordkeeping, and reporting requirements to ensure compliance with the control measure.[98] Without appropriate monitoring, recordkeeping, and reporting requirements, violations of the control measure could go undetected.[99]

Therefore, we will evaluate whether Alaska met the applicable planning requirements as part of the Fairbanks Serious Plan and Fairbanks 189(d) Plan.

2. Summary of State's Submission

a. Identification and Adoption of BACM

We note that Alaska included its initial BACM analysis in the Fairbanks Serious Plan, submitted in 2019. EPA approved a number of specific control measures as SIP strengthening but did not approve them as meeting the BACM/BACT requirement at that time.[100] Subsequently, Alaska updated its BACM analysis and resubmitted the updated analysis in 2020 as part of the Fairbanks 189(d) Plan, to meet Serious area and 189(d) requirements. Even though the State made a SIP submission intended to meet the requirements of CAA section 189(d), it remains obligated to meet the BACM/BACT level controls required as part of a Serious area nonattainment plan for the area. The State did not withdraw some parts of the Serious area plan with respect to the BACM/BACT requirements for certain sources. Accordingly, we are evaluating the Fairbanks 189(d) Plan submission where the State has updated parts of the BACM analysis, and otherwise evaluating the information the State initially included in the Fairbanks Serious Plan.

Alaska followed EPA's recommended 5-step process to evaluate BACM-level controls for sources of $PM_{2.5}$ and $PM_{2.5}$ precursors. Alaska also analyzed controls for stationary sources of $PM_{2.5}$ and $PM_{2.5}$ precursors to satisfy BACT requirements. Alaska's process for analyzing BACT-level controls is discussed separately in this section following the BACM discussion.

For Step 1, Alaska developed a comprehensive inventory of sources and source categories of $PM_{2.5}$ and $PM_{2.5}$ precursors.[101] Alaska identified the following source categories in the Fairbanks nonattainment area: solid fuel burning (outdoor hydronic heaters, solid fuel-fired heaters, fireplaces, burn barrels and open burning, and agricultural and forest burns); residential and commercial fuel oil combustion; transportation (automobiles and heavy-duty vehicles); and small area/commercial sources (coffee roasters, charbroilers, incinerators, and used oil burners).

For Step 2, Alaska identified potential control measures for the source categories identified in Step 1. First, Alaska reviewed the control measures that were implemented under the Fairbanks Moderate Plan and discussed their implementation status.[102] Alaska then reconsidered and reassessed the measures that the State rejected as potential RACM/RACT for the Fairbanks Moderate Plan. As a means of identifying additional potential BACM/BACT measures for the Fairbanks area, Alaska surveyed rules and regulations in other states and local governments and identified measures for reducing direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors adopted into any nonattainment plan or used in practice to control emissions. Alaska also created a stakeholder group to identify, evaluate, and recommend community-based solutions to bring the area into compliance with Federal air quality standards for $PM_{2.5}$, *see* State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–3 and Table 7.7–4. Overall, Alaska identified 84 control measures for analysis which are included in State Air Quality Control Plan, Vol III, Appendix III.D.7.7. EPA's review of each of the 84 control measures is included as a Technical Support Document in the docket for this action.[103]

With respect to controls for NH_3 emissions, Alaska stated that processes that emit NH_3 (biomass burning, mobile, home heating) differ in Fairbanks from those in the rest of the country, where NH_3 from agricultural activities, vehicles, and other industrial activities form ammonium nitrate. Alaska conducted a literature review to identify potential controls for the sources of NH_3 in the emissions inventory. Alaska was unable to identify any potential controls to control NH_3 emissions specifically.[104] As discussed further in this section, Alaska included in the Fairbanks 189(d) Plan an analysis that demonstrates that certain measures and technologies designed to reduce emissions of direct $PM_{2.5}$ have the co-benefit of reducing emissions of NH_3.

For Step 3, Alaska evaluated technical feasibility for the potential control measures and identified and rejected certain control measures that the State determined to be technically infeasible.[105]

[97] Control measures must be incorporated by reference into the regulatory portion of the SIP (52.70(c) and (d)) with appropriate monitoring and reporting requirements. *See* CAA section 110(a)(2)(A); 42 U.S.C. 7410(a)(2)(A); 81 FR 58010, at pp. 58046–47; 57 FR 13498, at pp.13567–68.

[98] 81 FR at 58046–47; 57 FR 13498, at p. 13567–68; 67 FR 22168, at p. 22170; 80 FR 33840 at pp. 33843, 33865; *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174, at pp. 1189–1190 (9th Cir. 2012).

[99] 67 FR 22168, at p. 22170; *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174, at pp. 1189–1190 (9th Cir. 2012).

[100] 86 FR 52997.

[101] State Air Quality Control Plan, Vol II, Chapter III.D.7.6.6.

[102] *See* State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–1

[103] Jentgen, M. (September 27, 2022). *Technical support document for Alaska Department of Environmental Conservation's (ADEC) control measure analysis, under 40 CFR 1010(a) and (c).* U.S. Environmental Protection Agency, Region 10, Air and Radiation Division.

[104] *See* State Air Quality Control Plan, Vol III, Appendix III.D.7.7 at 5354. Alaska also notes that in the Fairbanks Nonattainment Area, there is only a limited amount of particulate matter-nitrate measured at the monitors.

[105] State Air Quality Control Plan, Vol III, Appendix III.D.7.7–5355.

For Step 4, Alaska evaluated the economic feasibility of the control measures that it determined to be technically feasible. Alaska included these economic evaluations of potential emission control technologies in the Fairbanks 189(d) Plan.[106]

For Step 5, Alaska determined whether it could implement a control measure or technology in whole or in part no later than four years after reclassification of the area to Serious nonattainment, which would be June 2021.[107]

Below is a summary of the regulations adopted by Alaska, organized by source category, resulting from the BACM analyses included in the Fairbanks Serious Plan and Fairbanks 189(d) Plan, included in State Air Quality Control Plan, Vol II, Chapter III.D.7.7 and State Air Quality Control Plan, Vol III, Appendix III.D.7.7.

i. Solid-Fuel Burning

The solid-fuel burning source category includes a number of measures that the State adopted as part of the Fairbanks Serious Plan. These measures address direct $PM_{2.5}$ SO_2, and NH_3 emissions. As discussed in Step 2, Alaska researched potential controls measures for NH_3 for this source category and did not identify any ammonia-specific controls.[108] However, according to Alaska, some measures identified and adopted by the State to control emissions of direct $PM_{2.5}$ have the co-benefit of reducing emissions of NH_3.

- The owner, vendor, or dealer of a wood-fired heating device must register the device with Alaska upon the occurrence of events such as new device sale, home sale, or participating in a curtailment waiver program. 18 AAC 50.077(h).
- Commercial wood sellers must register with Alaska and ensure that wood being sold must have a moisture content less than 20 percent. Non-commercial wood sellers are not permitted to sell wet wood. 18 AAC 50.076(d), (e), (g), (j), (k), and (l). According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ emissions as well as SO_2 and NH_3 emissions.
- Wood-fired heating devices are prohibited in the nonattainment area unless specific device performance criteria are met, and outdoor hydronic heaters are not permitted except for pellet-fueled hydronic heaters that also meet specific performance criteria. New woodstoves and pellet-fueled woodstoves must be EPA-certified and meet specific performance criteria. A person may not install a new pellet-fueled hydronic heaters within 300 feet from the closest property line or within 660 feet from a school, clinic, hospital, or senior housing unit. 18 AAC 50.077(a), (b), (c), (d), and (j). According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ and NH_3 emissions as well as accounting for SO_2 emissions. Alaska acknowledges that there is a resulting increase in SO_2 emissions since measures designed to reduce direct $PM_{2.5}$ through removal, curtailment, or replacement of solid-fuel devices trigger a shift in heating energy to heating oil, which has greater SO_2 emissions compared to wood fuels.[109]
- Regulations that give Alaska the authority to review manufacturer test results and place a model on the department's list of devices, which identifies what devices that are approved for operation in the Fairbanks $PM_{2.5}$ Nonattainment Area. 18 AAC 50.077(e). According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ emissions as well as SO_2 and NH_3 emissions.
- Alaska revised the woodstove curtailment program rules to lower curtailment thresholds and further restrict curtailment waivers. Specifically, Alaska revised the requirements for the exemption process to ensure a waiver is temporary and objective criteria are used to determine economic hardship. Alaska continues to implement this program. Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, Chapter III.D.7.12; 18 AAC 50.030(a) and 18 AAC 50.075(e).
- When Alaska issues a curtailment alert, fuel to non-exempt devices must be withheld, and combustion in these devices—as evidenced by visible smoke from a chimney—must cease within three hours after the effective time of a curtailment of operation under an emergency episode. Solid fuel fired heating device shall be operated so that visible emissions do not cross property lines.18 AAC 50.075(e)(3) and (f)(2). Alaska has revised the requirements for curtailment program advisories and alerts. Now, an advisory is called when $PM_{2.5}$ concentrations are expected to reach 15 $\mu g/m^3$. A stage 1 alert is called when $PM_{2.5}$ concentrations are expected to reach 20 $\mu g/m^3$ (this alert stage allows for specific exemptions). A stage 2 alert is called when $PM_{2.5}$ concentrations are expected to reach 30 $\mu g/m^3$. Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, Chapter III.D.7.12. According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ and NH_3 emissions as well as accounting for SO_2 emissions. Alaska acknowledges that there is a resulting increase in SO_2 emissions since measures designed to reduce direct $PM_{2.5}$ through removal, curtailment, or replacement of solid-fuel devices trigger a shift in heating energy to heating oil, which has greater SO_2 emissions compared to wood fuels.[110]
- Wood-fired heating devices and wood fired retrofit control devices must be professionally sized and professionally installed with confirmation of proper installation and location. 18 AAC 50.077(i).
- New woodstoves cannot serve as the primary or only source of heat, unless the device is installed in a ''dry cabin'' or existing rental units that have qualified for No Other Adequate Source of Heat (NOASH) waivers. 18 AAC 50.077(j). According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ emissions as well as SO_2 and NH_3 emissions.
- Wood-fired device vendors in the nonattainment area are required to provide curtailment information to the buyer at time of sale and review proper operating instructions. Wood-fired device vendors may not advertise devices prohibited for sale within the nonattainment area. 18 AAC 50.077(l).
- All EPA uncertified devices, non-pellet fueled hydronic heaters, and coal-fired heating devices must be removed or replaced by December 31, 2024, or upon sale, lease, or conveyance of an existing building, whichever is earlier; and these devices that may not be reinstalled within the area shall be rendered inoperable. 18 AAC 50.077(l) and (m); 18 AAC 50.079(f). According to the Fairbanks 189(d) Plan, this measure reduces both direct $PM_{2.5}$ emissions as well as SO_2 and NH_3 emissions.

ii. Residential and Commercial Fuel Oil Combustion

The State developed and adopted these measures to address fuel oil combustion to reduce SO_2 emissions. The State researched potential controls measures for NH_3 for this source category and did not identify any ammonia-specific controls. Starting September 1, 2022, an individual or

[106] State Air Quality Control Plan, Vol III, Appendix III.D.7.7–5440.

[107] State Air Quality Control Plan, Vol III, Appendix III.D.7.7–5442; State Air Quality Control Plan, Vol III, Appendix III.D.7.7–174.

[108] State Air Quality Control Plan, Vol III, Appendix III.D.7.7–5353–5354; State Air Quality Control Plan, Vol. II, Chapter III.D.7.10–5—10–7.

[109] State Air Quality Control Plan, Vol II, Chapter III.D.7.10.3.3.

[110] State Air Quality Control Plan, Vol. II, Chapter III.D.7.10.3.3.

business may only sell or purchase fuel oil containing no more than 1,000 parts per million (ppm) sulfur may be sold for use in fuel oil-fired equipment, including space heating devices.[111] As part of its BACM analysis included in the Fairbanks Serious Plan and updated in the Fairbanks 189(d) Plan, Alaska evaluated requirements to use ULSD heating oil in homes.[112] Alaska determined that the switch to ULSD is technologically feasible, while the economic analysis showed this change would result in a cost of $1,819 per ton of SO_2 removed. As described in detail in the ''Pollutants Addressed'' section III.B of this document, SO_2 is a significant precursor of $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area. After completing the BACM analysis, Alaska stated that, while the ULSD measure appears to be technically and economically feasible, Alaska declined to adopt and implement the measure.

Rather than mandate an area-wide fuel switch from Diesel #2 (2,566 ppm) to ULSD (15 ppm), Alaska elected to mandate a fuel switch to Diesel #1 (1,000 ppm) by September 1, 2022. The State determined that this initial step down, meant to be more economically feasible for local residents, reduced the environmental risks associated with the transport of an increased volume of fuel into the community and still provides a large sulfur reduction. As support for its rejection of mandating ULSD as BACM, Alaska cited a University of Alaska Fairbanks/Alaska cost analysis. This analysis estimated an increase in annual household heating expenditures of $68.31 (a 3 percent increase) under the selected measure, while the same cost analysis estimated an increase between $311.96 and $374.86 (a 13.5 to 16.5 percent increase) in annual household heating expenditures if Alaska mandated a switch to ULSD.[113] Alaska also cited concerns from local residents that the increased cost in fuel oil could drive more residents to burning less expensive and higher PM emitting solid fuels.

Alaska determined that the earliest date to implement the fuel switch to #1 Diesel was September 1, 2022. Alaska selected this date, in part, due to comments received during the public comment period. Also, Alaska stated that there is an inadequate supply of locally produced Diesel #1 and additional time was required to allow for the local refinery to modify its processes. Alaska also noted that the additional time allows residents to budget and prepare for the increased cost. Alaska received requests through the comment process to delay the conversion until 2024, but Alaska felt that was too long a delay and that the approximate two years provided should be sufficient to allow the local refinery and residents to plan and prepare for the change in fuel oil.

Alaska did not reevaluate its rejection of mandating switching to use of ULSD as part of the Fairbanks 189(d) Plan submission. Alaska reasoned that circumstances did not change sufficiently between submission of the Fairbanks Serious Plan to warrant revisiting its decision. Alaska noted that after implementation of the fuel switch to Diesel #1 in 2022, Alaska will evaluate whether the fuel switch results in significant sulfur reduction and whether the additional expense to homeowners of requiring the use of ULSD heating oil is needed to further address the air pollution problem.[114]

iii. Small Commercial Area Sources

The State evaluated potential measures from these sources to address direct $PM_{2.5}$, SO_2, and NH_3 emissions. After a literature review, Alaska did not identify any NH_3-specific controls for this source category.[115] Thus, Alaska identified and evaluated potential measures from these sources to address direct $PM_{2.5}$ and SO_2. For small area sources, Alaska identified coffee roasters, charbroilers, incinerators, and waste oil burners. Initially, as part of the Fairbanks Serious Plan, Alaska adopted regulations 18 AAC 50.078(c) and (d) that required information from charbroilers, incinerators, and waste oil burners. Coffee roasters, per 18 AAC 50.078(d), are required to install a pollution control device on any unit that emits 24 pounds or more of particulate matter in a 12-month period and either install controls or demonstrate technological or economic infeasibility, not later than one year from effective date of regulation. As an update in the Fairbanks 189(d) Plan, Alaska conducted an economic evaluation of charbroilers (catalyst oxidizers) and found the cost to be $47,786 per ton of $PM_{2.5}$ removed, concluding that installing catalyst oxidizers on charbroiling facilities is not cost effective. Regarding incinerators, Alaska states that, in fact, there are no incinerators within the Fairbanks $PM_{2.5}$ Nonattainment Area so no additional controls are required. For used oil burners, Alaska presented a technological infeasibility determination in the 189(d) Plan. According to the State, the only acceptable disposal method available in the nonattainment area is through burning. Shipping the used oil to the continental United States, another potential disposal method, would require risky overland transport and cost $2.51 per gallon to pick up, ship, and dispose. Another factor the State considered is that restricting burning of used oil would likely lead to dumping the used oil on land or water. Therefore, the State determined that this measure is technologically infeasible in the Fairbanks $PM_{2.5}$ Nonattainment Area.

iv. Mobile Emissions

The State evaluated measures from mobile sources to address direct $PM_{2.5}$, SO_2, and NH_3 emissions. After a literature review, Alaska did not identify any NH_3-specific controls for this source category.[116] Thus, Alaska identified and evaluated potential measures from these sources to address direct $PM_{2.5}$, SO_2. Alaska considered mobile sources and transportation measures as part of the BACM analysis, including high occupancy vehicle (HOV) lanes, traffic flow improvement, vehicle inspection and maintenance (I/M) programs, low-emission vehicle (LEV) program, retrofit diesel program, and van pools.[117] Alaska noted that Fairbanks has expanded the availability of plug-ins and required electrification of certain parking lots. Fairbanks has also expanded transit service and a commuter van pool program. Alaska also has an anti-idle program. Alaska concluded that, due to relatively light traffic congestion in Fairbanks, low population and employment density, any additional transportation control measures would provide limited emission reduction benefits.

b. Summary of Control Measures Selected by Alaska To Meet BACM Requirements

Based on the BACM analysis, Alaska identified and implemented emissions controls, as described in Table 4.

[111] 18 AAC 50.078(b).

[112] State Air Quality Control Plan, Vol II, Chapter III.D.7.7; State Air Quality Control Plan, Vol. III, Appendix III.D.7.7.

[113] Alaska Department of Environmental Conservation. (February 2019). *Residential Fuel Expenditure Assessment of a Transition to Ultra-Low Sulfur and High Sulfur No. 1 Heating Oil for the Fairbanks PM-2.5 Serious Nonattainment Area.* State Air Quality Control Plan, Vol II, Appendix III.D.7.7, at p. III.D.7.7–226.

[114] State Air Quality Control Plan, Vol. II, Chapter III.D.7.7, at pp. III.D.7.7–129—III.D.7.7–131.

[115] State Air Quality Control Plan, Vol. III, Appendix III.7.7–5353–5354.

[116] State Air Quality Control Plan, Vol. III, Appendix III.7.7–5353–5354.

[117] State Air Quality Control Plan, Vol III, Appendix III.D.7.7, Measures 57, 59, and R20.

Alaska's identification and adoption of BACT is discussed in the next section.

TABLE 4—ALASKA'S LIST OF EMISSION CONTROL MEASURES WITH QUANTIFIABLE EMISSION BENEFITS AND PROJECTED EMISSIONS REDUCTIONS IN 2024

[First year all control measures are implemented]

Control measure	State rule	2024 emission reductions (tons per day)	Implementation date	
			$PM_{2.5}$	SO_2
Woodstove changeout program	Targeted Airshed Grant terms and conditions 18 AAC 50.077(a), (b), (c), (d), (e), (j), (m).	0.68	0.01	Ongoing, through 2025.
Solid fuel burning curtailment program (Stage 1 and Stage 2 Alerts).	Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, Chapter III.D.7.12; 18 AAC 50.030(a); 18 AAC 50.075(e).	0.68	SO_2: −0.23	Ongoing.
Shift from #2 to #1 oil for residential/commercial space heating.	18 AAC 50.078(b)	0.01	1.95	2023.
Dry wood requirements for commercial wood sales.	18 AAC 50.076(d), (e), (g), (j), (k), and (l)	0.10	<0.01	2022.
Removal of all uncertified device and cordwood outdoor hydronic heaters.	18 AAC 50.077(l) and (m)	0.16	<0.01	2024.
New wood-fired device requirements (*i.e.,* 2.0 g/hr).	18 AAC 50.077(c)	0.39	0.01	2020.
Removal of coal heaters	18 AAC 50.079(f)	0.02	0.02	2024.
Wood-fired devices may not be primary or only heating source.	18 AAC 50.077(j)	0.35	−0.01	2020.
NOASH/exemption requirements	Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, Chapter III.D.7.12; 18 AAC 50.077(g).	<0.01	<0.01	2020.
Combined BACM emissions reductions		2.39	1.74	

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Tables 7.7–28 and 7.7–29.

c. Alaska's Identification and Adoption of BACT

Alaska noted that large stationary sources are a subgroup of emissions sources that have specific requirements in the BACM analysis. Alaska evaluated all stationary sources with potential to emit (PTE) greater than 70 tons per year (tpy) of $PM_{2.5}$ or $PM_{2.5}$ precursors for potential BACT-level controls. According to Alaska, sources with emissions below the 70 tpy threshold only require evaluation for BACM. Alaska states that this emissions threshold is in place to distinguish between the planning requirements for certain sources emitting above and below this threshold and is consistent with an emissions threshold in the 2016 $PM_{2.5}$ Implementation Rule.[118]

We note that EPA disagrees with this assessment. All emissions sources identified in the emissions inventory are subject to BACM requirements, and the BACT evaluation process is merely a sub-set of BACM that includes a process to evaluate emissions control technologies that are the best available control measures for the emission source category. Accordingly, all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are subject to BACM and BACT requirements regardless of PTE. There is no PTE threshold below which BACT requirements do not apply. The 70 tons per year PTE threshold cited by Alaska only has relevance in determining whether a new stationary source proposed to be constructed in a nonattainment area meets the definition of a major stationary source pursuant to the nonattainment new source review provisions.[119]

Alaska identified five stationary sources that it evaluated for potential BACT controls, see State Air Quality Control Plan, Vol II, Chapter III.D.7, section 7.7.8. Table 5 includes the annual emissions (tons/year) for each of the facilities:

TABLE 5—ANNUAL EMISSIONS (TONS/YEAR), BY FACILITY, IN 2019

Facility	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Chena Power Plant	55.63	507.39	623.70	1.96	0.06
Fort Wainwright	66.58	481.13	485.30	4.91	0.06
UAF Campus Power Plant	9.08	154.52	246.51	1.56	.....
GVEA Zehnder	1.04	27.98	76.32	0.04	0.50
GVEA North Pole	26.45	247.31	1,046.50	0.90	14.98

Source: State Air Quality Control Plan, Vol III, Appendix III.D.7.7–6–9–10–2020 fairbanks-5-percent-plan-sip-sector-emission-summary-calculation-spreadsheet.

Below is a summary of Alaska's BACT analysis for each source. Each source is comprised of multiple emission units, and the State performed the BACT analysis for each emission unit. After a literature review, Alaska did not identify any NH_3-specific controls for this source category.[120] Thus, Alaska identified and evaluated potential measures from these sources to address direct $PM_{2.5}$ and SO_2 emissions. Alaska's BACT determinations are evaluated by EPA on an independent basis. Details of EPA's analysis of Alaska's BACT evaluation and determination are included as BACT

[118] We note that Alaska applied this threshold to emissions sources at the GVEA Zehnder facility.

[119] 40 CFR 51.165(a)(1)(iv)(A)(*1*).

[120] State Air Quality Control Plan, Vol. III, Appendix III.7.7–5353–5354.

Technical Support Documents in the docket for this action.[121]

i. Chena Power Plant

Chena Power Plant is an existing stationary source owned and operated by Aurora Energy, LLC, which consists of four existing coal-fired boilers: three 76 million British Thermal Units (MMBtu)/hour overfeed traveling grate stoker type boilers and one 269 MMBtu/hr spreader-stoker type boiler that burn coal to produce steam for heating and power (497 MMBtu/hr combined).

The State's BACT Determination for the Chena Power Plant evaluated potential controls to reduce NO_X, $PM_{2.5}$, and SO_2 emissions from its four coal-fired boilers.[122]

TABLE 6—CHENA POWER PLANT BACT SUMMARY

Chena Power Plant, Aurora Energy, LLC	
Pollutant	Alaska's BACT determination, by source category
Coal-fired boilers (EUs 4–7)—3 boilers rated 76 MMBtu per hour and 1 boiler rated 269 MMBtu per hour	
$PM_{2.5}$	N/A (Alaska claims installed single full steam baghouse is highest rated control available, but no $PM_{2.5}$ BACT analysis or emission limitation was submitted).
SO_2*	By June 9, 2021, Aurora Energy shall limit the sulfur content of coal to 0.25% sulfur by weight and limit SO_2 emissions from the coal-fired boilers to no more than 0.301 lb/MMBtu.

* Alaska found it economically infeasible for Aurora Energy to implement retrofit SO_2 controls on emission units at the Chena Power Plant.
Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–10 and Section 7.7.8.2.5.

Regarding $PM_{2.5}$ controls, Alaska claimed that, because the Chena Power Plant has direct $PM_{2.5}$ emissions less than 70 tons per year, a $PM_{2.5}$ BACT analysis was not prepared or submitted by the State. EPA notes our disagreement with this interpretation. Nevertheless, Alaska states that the Chena Power Plant is already equipped with a single full stream baghouse for controlling particulate emissions from the four coal-fired boilers. Baghouses/fabric filters are the highest rated control available (99.9% control efficiency) for $PM_{2.5}$ emissions from coal-fired boilers. As noted in the paragraph above, while this would appear to be an efficient control measure for $PM_{2.5}$ emissions, Alaska did not submit any further information regarding the $PM_{2.5}$ BACT requirement for the Chena Power Plant or any further documentation to ensure use of the existing single full stream baghouse is adopted as a permanent and enforceable requirement of the EPA-approved SIP.

Alaska identified SO_2 as a significant precursor to $PM_{2.5}$ formation in Fairbanks. Accordingly, the state evaluated potential SO_2 controls for the Chena Power Plant. Alaska identified five technologies as technologically feasible for reduction of SO_2 emissions from the industrial coal-fired boilers: (1) wet scrubbers; (2) spray dry absorber (SDA); (3) dry sorbent injection (DSI); (4) low sulfur coal; and (5) good combustion practices. Neither Alaska nor Aurora evaluated the circulating dry scrubber (CDS) technology, as EPA suggested in comments.[123] For a detailed summary and evaluation of Alaska's BACT submission, see EPA's Technical Support Document.[124]

On November 19, 2018, Aurora proposed a BACT alternative to the State, contending that DSI, the least expensive SO_2 control option, should not be required as BACT because Aurora cannot afford this control technology despite the fact it has been demonstrated to be economically feasible.] Aurora included information regarding the economic impact of requiring DSI based on the following financial indicators, consistent with the $PM_{2.5}$ Implementation Rule and longstanding EPA policy:[125] (1) fixed and variable production costs; (2) product supply and demand elasticity; (3) product prices (cost absorption vs. cost pass-through); (4) expected costs incurred by competitors; (5) company profits; (6) employment costs; (7) and other costs (*e.g.,* for BACM implemented by public sector entities).[126] Aurora concluded that even installing the least expensive SO_2 control, DSI, is economically infeasible and would do very little to solve the air quality problem in the nonattainment area.[127]

Ultimately, Alaska determined that it would be economically infeasible for Aurora Energy to implement retrofit SO_2 controls on its emission units at the Chena Power Plant. Alaska instead identified BACT for this source as the existing requirements to operate good combustion practices and to use a low sulfur coal as a fuel source. Alaska also

[121] *See* Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Aurora Energy, LLC Chena Power Plant as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division; Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for Fort Wainwright-US Army Garrison Alaska (FWA) and Doyon Utilities, LLC (DU) as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division; Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the University of Alaska, Fairbanks as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division; Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[122] Alaska evaluated potential NO_X controls for each emission unit, but because Alaska determined and EPA is proposing to approve in this proposed action that NO_X emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, ADEC does not plan to require implementation of BACT for NO_X. Thus, EPA is not discussing ADEC's BACT analysis for NO_X here.

[123] *See* EPA comments regarding site-specific quotes for high performing SO_2 control technologies, such as a wet scrubber (WFGD), spray dry absorber (SDA), and circulating dry scrubber (CDS); ''EPA Comments on 2020 Department of Environmental Conservation (DEC) Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP—Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[124] Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Aurora Energy, LLC Chena Power Plant as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[125] 57 FR 18070, April 28, 1992.

[126] Proposed BACT Alternative, Aurora Energy, November 19, 2018, State Air Quality Control Plan, Appendix III.D.7.7–4851 (PDF page 995).

[127] Proposed BACT Alternative, Aurora Energy, November 19, 2018, State Air Quality Control Plan, Appendix III.D.7.7–4869 (PDF page 1014).

required as BACT that, by June 9, 2021, Aurora Energy shall limit the sulfur content of coal to 0.25% sulfur by weight and limit SO_2 emissions from the coal-fired boilers to no more than 0.301 lb/MMBtu.

ii. Fort Wainwright

Fort Wainwright is an existing U.S. Army installation. Emission units located within the military installation include units such as boilers and generators that are owned and operated by the U.S. Army Garrison Alaska (referred to as FWA). The Central Heating and Power Plant (CHPP), also located within the installation footprint, is owned and operated by Doyon Utilities, LLC (DU), the regional Alaska Native corporation for Interior Alaska. The two entities, DU and FWA, comprise a single stationary source operating under two permits.

In addition to the CHPP, the source contains additional emission units comprised of small and large emergency engines, fire pumps, and generators, diesel-fired boilers, and material handling equipment. Alaska included a BACT analysis for the CHPP and all other emission units at the Fort Wainwright source as part of the Fairbanks Serious Plan under State Air Quality Control Plan, Vol II, Chapter III.D.7.7 and Appendix III.D.7.7, Part 2. The CHPP is comprised of six spreader-stoker type coal-fired boilers each rated at 230 MMBtu/hr, that burn coal to produce steam for stationary source-wide heating and power. Alaska's BACT analysis for Fort Wainwright source evaluated potential controls to reduce NO_X, $PM_{2.5}$, and SO_2 emissions from each of these emissions units at the stationary source.[128]

TABLE 7—FORT WAINWRIGHT BACT SUMMARY

Fort Wainwright, Doyon Utilities	
Pollutant	Alaska's BACT determination, by source category
Coal-fired boilers (EUs 1–6)—each unit rated 230 MMBtu per hour	
$PM_{2.5}$	• Operate and maintain a full stream baghouse at all times the units are in operation; • $PM_{2.5}$ emissions from DU EUs 1 through 6 shall not exceed 0.045 lb/MMBtu over a 3-hour averaging period; and • Conduct an initial performance test to obtain an emission rate.
SO_2	• On or before June 9, 2021, DU shall limit the gross as received sulfur content of coal to no greater than 0.25% sulfur by weight. • On or before June 9, 2021, DU shall submit a Title I permit application to DEC that requires the permittee to install and operate a DSI pollution control system on the coal-fired boilers at CHPP effective no later than October 1, 2023. • DEC intends to issue the minor permit and incorporate the Title I requirements into the operating permit within one year of receiving a complete application. • On or before October 1, 2023, DU shall install and operate a DSI pollution control system on the coal-fired boilers at CHPP. • The SO_2 BACT limit for EUs 1 through 6 shall not exceed 0.12 lb/MMBtu averaged over a 3-hour period.
Diesel-fired oil boilers (27 emissions units)	
$PM_{2.5}$	• $PM_{2.5}$ emissions from the diesel-fired boilers shall not exceed 0.012 lb/MMBtu averaged over a 3-hour period, with the exception of the waste fuel boilers which must comply with the State particulate matter emissions standard of 0.05 grains per dry standard cubic foot under 18 AAC 50.055(b)(1); • Limit combined operation of FWA EUs 8, 9, and 10 to 600 hours per year; and • Maintain good combustion practices by following the manufacturer's maintenance procedures at all times of operation.
SO_2	• SO_2 emissions from the diesel-fired boilers shall be controlled by only combusting ULSD, with the exception of the waste fuel boilers; • Combined operating limit of 600 hours per year for FWA EUs 8, 9, and 10; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
Large diesel-fired engines, fire pumps, and generators (8 emissions units; greater than 500 horsepower)	
$PM_{2.5}$	• Limit combined operation of FWA EUs 11, 12, and 13 to 600 hours per year; • Limit operation of DU EU 8 to 500 hours per year; • $PM_{2.5}$ emissions from DU EU 8, FWA EUs 50, 51, and 53 shall not exceed 0.15 g/hp-hr; • $PM_{2.5}$ emissions from FWA EUs 11 through 13 and 54 shall not exceed 0.32 g/hp-hr; • Limit non-emergency operation of FWA EUs 50, 51, 53, and 54 to no more than 100 hours each per year; • Combust only ULSD; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2	• SO_2 emissions from DU EU 8, and FWA EUs 11, 12, 13, 50, 51, 53, and 54 shall be controlled by only combusting ULSD; • Limit operation of DU EU 8 to 500 hours per year; • Combined operating limit of 600 hours per year for FWA EUs 11, 12, and 13; • Limit non-emergency operation of FWA EUs 50, 51, 53, and 54 to no more than 100 hours each per year; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.

[128] Alaska evaluated potential NO_X controls for each emission unit, but because Alaska determined and EPA proposed to approve in this action that NO_X emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, ADEC does not plan to require implementation of BACT for NO_X. Thus, EPA is not discussing ADEC's BACT analysis for NO_X here.

TABLE 7—FORT WAINWRIGHT BACT SUMMARY—Continued

Fort Wainwright, Doyon Utilities	
Pollutant	Alaska's BACT determination, by source category
Small emergency engines, fire pumps, and generators (41 emissions units)	
$PM_{2.5}$	• Combust only ULSD; • Limit non-emergency operation of DU EUs 9, 12, 14, 22, 23, 29a, 30, 31a, 32, 33, 34, 35, 36, FWA EUs 26 through 39, and 55 through 65 to no more than 100 hours each per year; • For engines manufactured after the applicability dates of 40 CFR part 60 subpart IIII, comply with the applicable particulate matter emission standards in 40 CFR part 60 subpart IIII; • Maintain good combustion practices by following the manufacturer's operating procedures at all times of operation; and • Demonstrate compliance with the numerical BACT emission limits (emission limit of 0.015 – 1 g/hp-hr (3-hour average) varies by emission unit, listed in the State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–13) by maintaining records of maintenance procedures conducted in accordance with 40 CFR subparts 60 and 63, and the EU operating manuals.
SO_2	• Limit non-emergency operation of DU EUs 9, 12, 14, 22, 23, 29a, 30, 31a, 32, 33, 34, 35, 36, FWA EUs 26 through 39, and 55 through 65 to no more than 100 hours each per year; • Combust only ULSD; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
Material handling sources (6 emissions units; coal prep and ash handling)	
$PM_{2.5}$	• $PM_{2.5}$ emissions from the material handling equipment EUs 7a–7c, 51a, and 51b shall be controlled by operating and maintaining fabric filters at all times the units are in operation; • $PM_{2.5}$ emissions from DU EU 7a shall not exceed 0.0025 gr/dscf; • $PM_{2.5}$ emissions from DU EUs 7b, 7c, 51a, and 51 b shall not exceed 0.02 gr/dscf; • $PM_{2.5}$ emissions from DU EU 52 shall not exceed 1.42 tpy. Continuous compliance with the $PM_{2.5}$ emissions limit shall be demonstrated by complying with the fugitive dust control plan identified in the applicable operating permit issued to the source in accordance with 18 AAC 50 and AS 46.14; and • Compliance with the $PM_{2.5}$ emission rates for the material handling units shall be demonstrated by following the fugitive dust control plan and the manufacturer's operating and maintenance procedures at all times of operation.
SO_2	n/a.

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–11 and Chapter III.D.7.7.8.3.4.

For the coal-fired boilers, Alaska stated that three SO_2 emission controls were evaluated: wet scrubbers, spray dry absorber (SDA), and DSI. Alaska estimated the economic cost of installing wet scrubbers to be $16,356 per SO_2 ton removed. Alaska estimated the economic cost of installing SDA to be $16,748 per SO_2 ton removed. Lastly, Alaska estimated the economic cost of installing DSI to be $11,383 per SO_2 ton removed. Based on this evaluation, Alaska selected DSI as BACT and required DSI to be installed at Fort Wainwright by October 1, 2023. Alaska also included in the SIP submission the emission limits, emission controls, and operational limitations the State determined constituted BACT for the emission units in Fort Wainwright. However, Alaska did not submit as part of the Fairbanks Serious Plan all the monitoring, recordkeeping, and reporting (MRR) requirements for determining compliance with these BACT limits or requirements. Rather, Alaska indicated that such detailed requirements are already embodied in state-issued construction or operating permits or would be embodied in a state-issued Title I permit separate from the SIP. For a detailed summary and evaluation of Alaska's BACT submission, see EPA's Technical Support Document.[129]

iii. University of Alaska Fairbanks Campus Power Plant

The Fairbanks Campus Power Plant is an existing stationary source owned and operated by University of Alaska Fairbanks, which consists of two coal-fired boilers installed in 1962 that were later replaced by a circulating fluidized bed (CFB) dual fuel-fired boiler (coal and biomass) rated at 295.6 MMBtu/hr. Other emission units at the source include a 13,266 hp backup diesel generator, 13 diesel-fired boilers, one classroom engine, one diesel engine permitted but not yet installed, and a coal handling system for the new dual-fuel fired boiler.

The State's BACT determination for the Fairbanks Campus Power Plant evaluated potential controls to reduce NO_X, $PM_{2.5}$, and SO_2 emissions from each of the emissions units at the source.[130]

[129] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for Fort Wainwright-US Army Garrison Alaska (FWA) and Doyon Utilities, LLC (DU) as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[130] Alaska evaluated potential NO_X controls for each emission unit, but because Alaska determined and EPA proposed to approve in this action that NO_X emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, ADEC does not plan to require implementation of BACT for NO_X. Thus, EPA is not discussing ADEC's BACT analysis for NO_X here.

TABLE 8—UNIVERSITY OF ALASKA FAIRBANKS CAMPUS POWER PLANT—BACT SUMMARY

University of Alaska Fairbanks	
Pollutant	Alaska's BACT determination, by source category
Dual fuel-fired boiler (EU 113)—unit rated at 295 MMBtu per hour; coal and woody biomass fuel; constructed in 2019	
$PM_{2.5}$	• Operate and maintain fabric filters at all times the unit is in operation; • $PM_{2.5}$ emissions from EU 113 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; and • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures. • Conduct an initial performance test to obtain an emission rate.
SO_2*	• Maintaining good combustion practices by following the manufacturer's operating and maintenance procedures, combustion of low sulfur coal as a fuel source, and the existing SO_2 emission limit of 0.20 lb/MMBtu determined on a 30-day rolling average. • By June 9, 2021, UAF shall limit the gross as received sulfur content of coal delivered to the stationary source to 0.25% sulfur by weight.
Mid-sized diesel-fired boilers (EUs 3 and 4)—each unit rated 180 MMBtu per hour	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EUs 3 and 4 shall not exceed 0.012 lb/MMBtu averaged over a 3-hour period while firing diesel fuel; • $PM_{2.5}$ emissions from EU 4 shall not exceed 0.0075 lb/MMBtu averaged over a 3-hour period while firing natural gas; • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and • Limit NO_X emissions from EUs 4 and 8 to no more than 40 tons per year combined.
SO_2	• On or before June 9, 2020, UAF shall also submit a Title I permit application to Alaska that includes a BACT requirement to limit the sulfur content of fuel oil combusted in its diesel-fired boilers to no greater than 1,000 parts per million weight (ppmw) (S1000) from October 1 through March 31 with an effective date of no later than October 1, 2020. • On or before June 9, 2021, UAF shall also submit a Title I permit application to DEC that includes a BACT requirement to limit the sulfur content of fuel oil combusted in its diesel-fired boilers to no greater than 15 ppmw (ULSD) from October 1 through March 31 with an effective date of no later than October 1, 2023; • SO_2 emissions from EU 4 will be limited by complying with the combined annual SO_2 emission limit of 40 tons per 12 month rolling period for EUs 4 and 8; • SO_2 emissions from EU 4 while firing natural gas shall not exceed 0.60 lb/MMscf; • Maintain good combustion practices by following the manufacturer's maintenance procedures at all times of operation; and • Compliance with the proposed SO_2 emission limit will be demonstrated through fuel shipment receipts and/or fuel testing for sulfur content.
Small-sized diesel-fired boilers (EUs 19–21)—each unit rated 6 MMBtu per hour	
$PM_{2.5}$	• Combined boilers operating limit of no more than 19,650 hours per year; • $PM_{2.5}$ emissions from EUs 19–21 shall not exceed 0.012 lb/MMBtu; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2	• On or before June 9, 2020, UAF shall also submit a Title I permit application to DEC that includes a BACT requirement to limit the sulfur content of fuel oil combusted in its diesel-fired boilers to no greater than 1,000 ppmw (S1000) from October 1 through March 31 with an effective date of no later than October 1, 2020. • On or before June 9, 2021, UAF shall also submit a Title I permit application to DEC that includes a BACT requirement to limit the sulfur content of fuel oil combusted in its diesel-fired boilers to no greater than 15 ppmw (ULSD) from October 1 through March 31 with an effective date of no later than October 1, 2023; • Combined boilers operating limit of no more than 19,650 hours per year; • Maintain good combustion practices by following the manufacturer's maintenance procedures at all times of operation; and • Compliance with the proposed SO_2 emission limit will be demonstrated through fuel shipment receipts and/or fuel testing for sulfur content.
Large diesel-fired engine (EU 8)—unit rated 13,266 horsepower	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EU 8 shall be controlled by operating positive crankcase ventilation and combusting only low ash diesel at all times of operation; • Limit NO_X emissions from EUs 4 and 8 to no more than 40 tons per year combined; • Limit non-emergency operation of EU 8 to no more than 100 hours per year; and • $PM_{2.5}$ emissions from EU 8 shall not exceed 0.32 g/hp-hr averaged over a 3-hour period.
SO_2	• On or before June 9, 2020, UAF shall submit a Title I permit application to Alaska that includes a BACT requirement to combust only ULSD in its diesel-fired engines no later than June 9, 2021; • Limit SO_2 emissions from EUs 4 and 8 to no more than 40 tons per year combined; • Limit non-emergency operation of EU 8 to no more than 100 hours per year; • Maintain good combustion practices by following the manufacturer's maintenance procedures at all times of operation; and • Compliance with the proposed SO_2 emission limit will be demonstrated through fuel shipment receipts and/or fuel testing for sulfur content.
Small diesel-fired engines (EUs 23–24, 26–29)	
$PM_{2.5}$	• Limit the operation of EU 27 to no more than 4,380 hours per year; • Limit non-emergency operation of EUs 24, 28, and 29 to no more than 100 hours per year each; • EU 27 shall comply with the Federal emission standards of NSPS Subpart IIII, Tier 3;

TABLE 8—UNIVERSITY OF ALASKA FAIRBANKS CAMPUS POWER PLANT—BACT SUMMARY—Continued

University of Alaska Fairbanks	
Pollutant	Alaska's BACT determination, by source category
SO_2	• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and Demonstrate compliance with the numerical BACT emission limits (emission limit of 0.015 − 1 g/hp-hr (3-hour average) varies by emission unit, listed in State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–18) by maintaining records of maintenance procedures conducted in accordance with 40 C.F.R. Subparts 60 and 63, and the EU operating manuals. • On or before June 9, 2020, UAF shall submit a Title I permit application to Alaska that includes a BACT requirement to combust only ULSD in its diesel-fired engines no later than June 9, 2021. • Limit the operation of EU 27 to no more than 4,380 hours per year; • Limit non-emergency operation of EUs 24, 28, and 29 to no more than 100 hours per year each; • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; • Compliance will be demonstrated with fuel shipment receipts and/or fuel tests for sulfur content; and • Compliance with the operating hours limit will be demonstrated by monitoring and recording the number of hours operated on a monthly basis.
Pathogenic waste incinerator (EU 9a)—unit rated 533 lb per hour	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EU 9A shall be controlled with a multiple chamber design; • Limit the operation of EU 9A to no more than 109 tons of waste combusted per year; • $PM_{2.5}$ emissions from EU 9A shall not exceed 4.67 lb/ton; • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and • Compliance with the proposed operational limit will be demonstrated by recording pounds of waste combusted for the pathogenic waste incinerator.
SO_2	• Limit the operation of EU 9A to no more than 109 tons of waste combusted per year; • SO_2 emissions from the operation of EU 9A shall be controlled by combusting ULSD at all times of operation; • Maintain good combustion practices by following the manufacturer's operational procedures at all times of operation; and • Compliance shall be demonstrated by obtaining fuel shipment receipts and/or fuel tests for sulfur content.
Material handling sources (EUs 105, 107, 109–111, 114, 128–130); coal prep and ash handling	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EUs 105, 107, 109 through 111, 114, and 128 through 130 will be controlled by enclosing each EU; • $PM_{2.5}$ emissions from the operation of the material handling units, except EU 111, will be controlled by installing, operating, and maintaining fabric filters and vents; • Initial compliance with the emission rates for the material handling units, except EU 111, will be demonstrated with a performance test to obtain an emission rate; and • Comply with the numerical emission limits (emission limit of 0.003–0.050 gr/dscf and .00005 lb/ton (EU 111) varies by emission unit listed in State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–18—note double citation)
SO_2	n/a.

* Alaska finds it economically infeasible for the University of Alaska Fairbanks to implement retrofit SO_2 controls on emission units at the Campus Power Plant.

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–16 and Chapter III.D.7.7.8.6.

Alaska included in the SIP submission most of the emission limits, emission controls, and operational limitations the State determined constituted BACT for the emission units at the UAF Campus Power Plant. However, Alaska did not submit as part of the Fairbanks Serious Plan the emission limits corresponding to Alaska's SO_2 BACT findings for several emission units [131] nor all the MRR requirements for determining compliance with BACT limits or requirements. Rather, Alaska indicated that such requirements are already embodied in state-issued construction or operating permits or would be embodied in a state-issued Title I permit separate from the SIP.

Alaska identified SO_2 as a significant precursor to $PM_{2.5}$ formation in Fairbanks. Accordingly, Alaska identified six potential control measures as technologically feasible for reduction of SO_2 emissions from the industrial dual-fired boiler (EU–113) at this source: (1) wet scrubbers; (2) SDA; (3) DSI; (4) low sulfur coal; and (5) good combustion practices. Notably, neither Alaska nor UAF evaluated the circulating dry scrubber (CDS) technology that EPA has commented is a proven technology for coal boilers that the State should analyze for BACT.[132]

On April 29, 2019, UAF submitted an economic infeasibility assessment to the State, contending that UAF could not afford to install DSI, the technology Alaska identified as BACT. UAF's assessment is based on the following financial indicators, consistent with the $PM_{2.5}$ Implementation Rule and longstanding EPA policy:[133] (1) fixed and variable production costs; (2) product supply and demand elasticity; (3) product prices (cost absorption vs. cost pass-through); (4) expected costs incurred by competitors; (5) company

[131] Mid-sized diesel-fired boilers (EUs 3 and 4); Small-sized diesel-fired boilers (EUs 19–21); Large diesel-fired engine (EU 8); Small diesel-fired engines (EUs 23–24, 26–29).

[132] *See* EPA Comments regarding site-specific quotes for high performing SO_2 control technologies, such as a wet scrubber (WFGD), spray dry absorber (SDA), and circulating dry scrubber (CDS); ''EPA Comments on 2020 DEC Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP- Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[133] 57 FR 18070, April 28, 1992.

profits; (6) employment costs; (7) and other costs (*e.g.,* for BACM implemented by public sector entities).[134] UAF contended that the Alaska proposed BACT is not financially feasible, given the proposed budget cuts in state funding impacting the university and that the duel fuel-fired boiler (EU–113) is an efficient and clean approach to generating electric power and heat from a single fuel source.[135]

Alaska ultimately found that it is economically infeasible for UAF to implement retrofit SO_2 controls on the dual fuel-fired boiler at the Fairbanks Campus Power Plant. Regarding the other emission sources at the UAF Campus Power Plant, we note that ULSD was identified as BACT for the diesel-fired boilers (EUs 3, 4, and 19–21), but Alaska delayed implementation of the requirement until 2023 and imposed an interim requirement (1000 ppmw sulfur content). Additionally, certain diesel-fired engines do not have hourly operation limits (EUs 23 and 26). For a detailed summary and evaluation of Alaska's BACT submission, see EPA's Technical Support Document.[136]

iv. Zehnder Facility

The Zehnder Facility (Zehnder) is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the Golden Valley Electric Association (GVEA) grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines and two diesel-fired generators (electro-motive diesels) used for emergency power and to serve as black start engines for the GVEA generation system. The primary fuel is stored in two 50,000 gallon above ground storage tanks. Turbine startup fuel and electro-motive diesels primary fuel is stored in a 12,000 gallon above ground storage tank.

Alaska's BACT analysis for the Zehnder evaluated potential controls to reduce NO_X, $PM_{2.5}$, and SO_2 emissions from its simple cycle gas turbines, large diesel-fired engines, and diesel-fired boilers.[137]

TABLE 9—ZEHNDER FACILITY BACT SUMMARY

Zehnder facility, Golden Valley Electric Authority	
Pollutant	Alaska's BACT determination, by source category
Fuel oil-fired simple cycle gas turbine (EUs 1 and 2)—each unit rated 268 MMBtu per hour	
$PM_{2.5}$	• Combust only low ash fuel; • $PM_{2.5}$ emissions from EUs 1 & 2 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; • Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2*	• On or before June 9, 2020, GVEA shall submit a Title I permit application to DEC limiting the PTE for SO_2 emissions from the Zehnder Facility to less than 70 tons per year. ○ According to Alaska, the facility will then be subject to the following requirement: After September 1, 2022, only fuel oil, containing no more than 1,000 parts per million sulfur, may be sold or purchased for use in fuel oil-fired equipment, in accordance with 18 AAC 50.078(b). • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation; and • Compliance with the proposed fuel sulfur content limit will be demonstrated with fuel shipment receipts and/or fuel test results for sulfur content.
Diesel-fired emergency generators (EUs 3 and 4)—each unit rated 28 MMBtu per hour	
$PM_{2.5}$	• Limit non-emergency operation of the large diesel-fired engines to no more than 100 hours per year each; • $PM_{2.5}$ emissions from EUs 3 and 4 shall not exceed 0.32 g/hp-hr over a 3-hour averaging period; • Demonstrate compliance with the numerical BACT emission limit by complying with 40 CFR 63 Subpart ZZZZ; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2*	• On or before June 9, 2020, GVEA shall submit a Title I permit application to DEC limiting the PTE for SO_2 emissions from the Zehnder Facility to less than 70 tons per year. ○ According to Alaska, the facility will then be subject to the following requirement: After September 1, 2022, only fuel oil, containing no more than 1,000 parts per million sulfur, may be sold or purchased for use in fuel oil-fired equipment, in accordance with 18 AAC 50.078(b). • Limit non-emergency operation of the large diesel-fired engines to no more than 100 hours per year each; • Maintain good combustion practices by following the manufacturer's operating maintenance procedures at all times of operation; and • Compliance with the proposed fuel sulfur content limit will be demonstrated with fuel shipment receipts and/or fuel test results for sulfur content.

[134] Alaska Department of Environmental Conservation. (April 23, 2019). *Fairbanks Serious $PM_{2.5}$ Nonattainment Area Best Available Control Technology (BACT) Determination—Economic Infeasibility of Sulfur Dioxide (SO_2) Emission Controls, University of Alaska Fairbanks,* State Air Quality Control Plan, Appendix, Part 3, III.D.7.7–1479 (PDF page 497).

[135] Alaska Department of Environmental Conservation. (April 23, 2019). *Fairbanks Serious $PM_{2.5}$ Nonattainment Area Best Available Control Technology (BACT) Determination—Economic Infeasibility of Sulfur Dioxide (SO_2) Emission Controls, University of Alaska Fairbanks.* State Air Quality Control Plan, Appendix, Part 3, III.D.7.7–1481 (PDF page 499).

[136] Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the University of Alaska, Fairbanks as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[137] Alaska evaluated potential NO_X controls for each emission unit, but because Alaska determined and EPA proposed to approve in this action that NO_X emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, ADEC does not plan to require implementation of BACT for NO_X. Thus, EPA is not discussing ADEC's BACT analysis for NO_X here.

TABLE 9—ZEHNDER FACILITY BACT SUMMARY—Continued

Zehnder facility, Golden Valley Electric Authority	
Pollutant	Alaska's BACT determination, by source category
Diesel-fired boilers (EUs 10 and 11)—each unit rated 1.7 MMBtu per hour	
$PM_{2.5}$	• $PM_{2.5}$ emissions shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; • Demonstrate compliance with the numerical BACT emission limit by complying with 40 CFR 63 Subpart JJJJJJ; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2*	• On or before June 9, 2020, GVEA shall submit a Title I permit application to DEC limiting the PTE for SO_2 emissions from the Zehnder Facility to less than 70 tons per year. ○ According to Alaska, the facility will then be subject to the following requirement: After September 1, 2022, only fuel oil, containing no more than 1,000 parts per million sulfur, may be sold or purchased for use in fuel oil-fired equipment, in accordance with 18 AAC 50.078(b). • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation; and • Compliance with the proposed fuel sulfur content limit will be demonstrated with fuel shipment receipts and/or fuel test results for sulfur content.

*Alaska's initial BACT finding: SO_2 emissions from EUs 1 and 2 shall be controlled by limiting the sulfur content of fuel combusted in the turbines to no more than 0.0015 percent by weight; requirements for the other emission units were to combust only ULSD.

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.4.

Alaska included in the SIP submission the emission limits, emission controls, and operational limitations the State determined constituted BACT for the emission units at the Zehnder facility. However, Alaska did not submit as part of the Fairbanks Serious Plan all the associated MRR requirements for determining compliance with these BACT limits or requirements. Rather, Alaska indicated that such requirements are already embodied in state-issued construction or operating permits. Regarding SO_2 controls for each of the emission sources at this facility, Alaska evaluated four technologically feasible SO_2 controls: ultra-low sulfur diesel (99.7 percent control of SO_2 emissions); low-sulfur diesel (93 percent control of SO_2 emissions); good combustion practices (less than 40 percent control of SO_2 emissions); limited operation (0 percent control of SO_2 emissions). Alaska reviewed the cost information provided by GVEA to evaluate appropriately the total capital investment of installing two new 1.5 million gallon ULSD storage tanks at GVEA's North Pole Facility.[138] Alaska concluded that the level of SO_2 reduction justifies the required use of ULSD as BACT for the fuel oil-fired simple cycle gas turbines at an economic cost of $8,753 per ton of SO_2 removed.

However, GVEA provided updated and supplemental information in an alternative BACT proposal submitted to Alaska on November 28, 2018.[139] GVEA proposed to limit emissions from the Zehnder Facility to less than 70 tons per year in place of BACT for SO_2, and, according to Alaska, eliminating the Zehnder Facility as a major source of SO_2. EPA notes here our disagreement with this approach. BACT is a subset of BACM requirements. All sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are subject to BACM and BACT requirements regardless of PTE. There is no PTE threshold below which BACT requirements do not apply. The 70 tons per year PTE threshold cited by Alaska only has relevance in determining whether a new stationary source proposed to be constructed in a nonattainment area meets the definition of a major stationary source pursuant to the nonattainment new source review provisions.[140] Thus, as part of selecting and adopting BACM for existing sources in Fairbanks, Alaska would need to select the best available measure that is technologically and economically feasible, which in this case is a requirement to use ULSD fuel. Nonetheless, Alaska relied on the approach to classify the Zehnder Facility as a ''non-major'' source and required GVEA to submit a Title I permit application no later than June 9, 2020, limiting the potential to emit of the Zehnder Facility to less than 70 tons per year. Once the Zehnder Facility's SO_2 limit goes into effect, Alaska will not consider the facility, including all emissions units, to be a major stationary source for SO_2 emissions subject to BACT limits. Instead, the Zehnder Facility will be subject to the BACM measures contained in Alaska regulations 18 AAC 50.078(b), that stipulate that after September 1, 2022, only fuel oil containing no more than 1,000 parts per million sulfur (*i.e.,* diesel #1), may be sold or purchased for use in fuel oil-fired equipment. We again note our disagreement with this approach, regardless of BACM or BACT distinction, the best available control measure should be adopted. For a detailed summary and evaluation of Alaska's BACT submission, see EPA Technical Support Document.[141]

v. North Pole Power Plant

The North Pole Power Plant is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the Golden Valley Electric Association (GVEA) grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines, two fuel oil-fired combined cycle gas combustion turbines, one fuel oil-fired emergency generator, and two propane-fired boilers. The State's BACT determination for the North Pole Power Plant evaluated potential controls to reduce NO_X, $PM_{2.5}$, and SO_2 emissions from its simple cycle gas turbines, combined cycle gas turbines, large

[138] Alaska Department of Environmental Conservation. (November 19, 2019). *Golden Valley Electric Association North Pole Power Plant and Zehnder Facility BACT Appendix.* State Air Quality Control Plan, Appendix, Part 4, III.D.7.7–1657 through 3855.

[139] Alaska Department of Environmental Conservation. (November 19, 2019). *Golden Valley Electric Association North Pole Power Plant and Zehnder Facility BACT Appendix.* State Air Quality Control Plan, Appendix, Part 4, III.D.7.7–3636 (PDF page 1979).

[140] 40 CFR 51.165(a)(1)(iv)(A)(*1*).

[141] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division

diesel-fired engines, and propane-fired boilers.[142]

TABLE 10—NORTH POLE POWER PLANT BACT SUMMARY

North Pole Power Plant, Golden Valley Electric Authority	
Pollutant	Alaska's BACT determination, by source category
Fuel oil-fired simple cycle gas turbine (EUs 1 and 2)—each unit rated 672 MMBtu	
$PM_{2.5}$	• Combust only low ash fuel; • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; • $PM_{2.5}$ emissions from EUs 1 & 2 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; and • Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate.
SO_2*	• By October 1, 2020, BACT for EUs 1 and 2 is to begin taking delivery of fuel oil with a sulfur content no greater than 1,000 ppmw (S1000) immediately after the Air Quality Stage Alert 1 and 2 are announced and remain taking deliveries of exclusively S1000 for as long as the air episode exists. • On or before June 9, 2022, GVEA shall submit a Title I permit application to DEC that includes a BACT requirement to limit the sulfur content of fuel combusted in EUs 1 and 2 to no greater than 15 ppmw (ULSD) from October 1 through March 31 to be effective no later than October 1, 2023. • Compliance with the proposed fuel sulfur content limit will be demonstrated with fuel shipment receipts and/or fuel test results for sulfur content; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
Fuel oil-fired combined cycle gas turbine (EUs 5 and 6)—each unit rated 455 MMBtu per hour	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EUs 5 and 6 shall be limited by complying with the combined annual NO_X limit listed in Operating Permit AQ0110TVP03 Conditions 13 and 12, respectively; • $PM_{2.5}$ emissions from EUs 5 & 6 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; • Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate; and • Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures.
SO_2	• Except during startup, SO_2 emissions from EUs 5 and 6 shall be controlled by limiting the fuel combusted in the turbines to light straight run turbine fuel (50 ppm sulfur in fuel); • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation; and • Compliance with the proposed fuel sulfur content limit will be demonstrated with fuel shipment receipts and/or fuel test results for sulfur content.
Large diesel-fired engine (EU 7)—unit rated 400 kW/619 horsepower	
$PM_{2.5}$	• $PM_{2.5}$ emissions from EU 7 shall be controlled by operating with positive crankcase ventilation; • $PM_{2.5}$ emissions from EU 7 shall be controlled by limiting operation to no more than 52 hours per 12 month rolling period; • $PM_{2.5}$ emissions from EU 7 shall not exceed 0.32 g/hp-hr over a 3-hour averaging period; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2	• SO_2 emissions from EU 7 shall be controlled by combusting fuel that does not exceed 0.05 weight percent sulfur at all time the unit is in operation; • SO_2 emissions from EU 7 shall be controlled by limiting operation to no more than 52 hours per 12-month rolling period; • Compliance with the SO_2 emission limit while firing diesel fuel will be demonstrated by fuel shipment receipts and/or fuel test results for sulfur content; and • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
Propane-fired boiler (EUs 11 and 12)—each unit rated 5 MMBtu per hour	
$PM_{2.5}$	• Burn only propane as fuel in EUs 11 and 12; • $PM_{2.5}$ emissions from EUs 11 and 12 shall not exceed 0.008 lb/MMBtu over a 3-hour averaging period; and • Compliance with the emission limit will be demonstrated with records of maintenance following original equipment manufacturer recommendations for operation and maintenance and periodic measurements of O2 balance. • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation.
SO_2	• SO_2 emissions from EUs 11 and 12 shall be controlled by only combusting gas fuel (propane) with a total sulfur content of no more than 120 parts per million volume (ppmv), or direct emissions of 0.75 lb/1,000 gal; • Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation; and

[142] Alaska evaluated potential NO_X controls for each emission unit, but because Alaska determined and EPA proposed to approve in this action that NO_X emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, ADEC does not plan to require implementation of BACT for NO_X. Thus, EPA is not discussing ADEC's BACT analysis for NO_X here.

TABLE 10—NORTH POLE POWER PLANT BACT SUMMARY—Continued

North Pole Power Plant, Golden Valley Electric Authority	
Pollutant	Alaska's BACT determination, by source category
	• Compliance with the preliminary emission rate limit will be demonstrated with fuel shipment receipts and/or fuel tests for sulfur content.

* Alaska's initial BACT finding: SO_2 emissions from EUs 1 and 2 shall be controlled by limiting the sulfur content of the fuel combusted in the turbines to no more than 0.0015 percent by weight (ULSD).
Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.5.

Alaska included in the SIP submission most of the emission limits, emission controls, and operational limitations the State determined constituted BACT for the emission units at the North Pole Power Plant. However, Alaska did not submit as part of the Fairbanks Serious Plan the emission limits corresponding to Alaska's SO_2 or $PM_{2.5}$ BACT findings for some emission units [143] nor the MRR requirements for determining compliance with all BACT limits or requirements. Rather, Alaska indicated that such requirements are already embodied in state-issued construction or operating permits or would be embodied in a state-issued Title I permit separate from the SIP. Alaska did not submit as part of the Fairbanks Serious Plan the MRR requirements for determining compliance with these BACT limits or requirements.

For SO_2 controls, Alaska evaluated four technologies as potential BACT for the simple cycle gas turbines: ultra-low sulfur diesel (controls 99.7 percent SO_2 emissions); low sulfur fuel (controls 93 percent SO_2 emissions); good combustion practices (controls less than 40 percent SO_2 emissions) and limited operation (controls 0 percent SO_2 emissions). Alaska reviewed the cost information provided by GVEA to evaluate the total capital investment of installing two new 1.5 million gallon ultra-low sulfur diesel storage tanks at GVEA's North Pole Power Plant. Alaska concluded that the economic analysis indicates the level of SO_2 reduction justifies the use of ultra-low sulfur diesel as BACT for the two simple cycle gas turbine emissions units at $13,838 per ton and $13,923 per ton respectively. We note that GVEA provided updated and supplemental information in an alternative BACT proposal submitted on November 28, 2018.[144] GVEA proposed as BACT for SO_2 to combust diesel #1 (1,000 ppm sulfur) in the simple cycle gas turbines when curtailment days are called in Fairbanks.

However, Alaska found that it was economically infeasible for GVEA to immediately switch to ULSD for the simple cycle gas turbines at the North Pole Power Plant. Therefore, the State concluded that BACT for this emission unit would be that starting October 1, 2020, GVEA must begin taking delivery of fuel oil with a sulfur content no greater than 1,000 ppmw immediately after an air quality curtailment (Air Quality Stage Alert 1 and 2) is announced and remain taking deliveries of exclusively S1000 for as long as the air episode exists. On or before June 9, 2022, GVEA shall submit a Title I permit application to Alaska that includes a BACT requirement to limit the sulfur content of fuel combusted in the simple cycle gas turbines to no greater than 15 ppmw (ULSD) from October 1 through March 31 to be effective no later than October 1, 2023.

For the combined cycle gas turbines, Alaska evaluated similar control measures as the simple cycle gas turbines but noted lower control efficiency of ULSD (controls 50 percent SO_2 emissions) and, according to Alaska, the light straight run turbine fuel currently in use has similar sulfur content as low sulfur fuel (light straight run turbine fuel has a sulfur content of 50 ppm, while the sulfur content for ULSD is 15 ppm). Alaska concluded that the economic analysis indicates the level of SO_2 reduction does not justify the use of ULSD as BACT for EUs 5 and 6 at $1,040,822 per ton. Instead, Alaska identified BACT as requiring light straight run fuel (sulfur content approximately 50 ppm) and maintaining good combustion practices. We note that a fuel requirement during startup was not specified for the combined cycle turbines (EUs 5 and 6). Regarding the other emission sources, we note that ULSD was not required for the large diesel-fired engine (EU 7), rather a requirement to use fuel not exceeding 0.05 weight percent sulfur. We again note that Alaska did not submit as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan MRR requirements associated with these SO_2 BACT requirements. For a detailed summary and evaluation of Alaska's BACT submission, see EPA's Technical Support Document.[145]

d. Alaska's Identification and Adoption of Additional Measures and Demonstration of 5% Reduction in Emissions Pursuant to CAA section 189(d)

The Fairbanks 189(d) Plan includes a reevaluation of previously rejected control measures.[146] Alaska also made two revisions to the Fairbanks Emergency Episode Plan, Vol II Chapter III.D.7.12. First, Alaska added a burn down period of 3 hours for solid-fuel heating devices that begins upon the effective date and time of a curtailment announcement. Alaska states that this further clarifies existing state regulation at 18 AAC 50.075(e)(3). Second, Alaska added specific requirements to document economic hardship as part of a No Other Adequate Source of Heat (NOASH) curtailment program waiver for solid-fuel devices.

As part of its reevaluation of control measures, Alaska provided additional information for a number of control measures considered in the BACM analysis. The Fairbanks 189(d) Plan submission included additional consideration of banning installation of solid-fuel devices in new construction, limiting heating oil to ultra-low sulfur diesel, dry wood requirements, emissions controls for small area sources, mobile sources, and most stringent measures.[147] However, Alaska did not include a reevaluation of BACT-

[143] Fuel oil-fired simple cycle gas turbine (EUs 1 and 2); Fuel oil-fired combined cycle gas turbine (EUs 5 and 6).

[144] Alaska Department of Environmental Conservation. (November 19, 2019. *Golden Valley Electric Association North Pole Power Plant and Zehnder Facility BACT Appendix.* State Air Quality Control Plan, Appendix, Part 4, III.D.7.7–3636 (PDF page 1979).

[145] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division

[146] State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–26.

[147] State Air Quality Control Plan, Vol II, Chapter III.D.7.7.12.

level controls for the stationary sources discussed in Section III.C.2.e of this document.

Regarding the requirement to demonstrate five percent annual reductions, Alaska included in the Fairbanks 189(d) Plan a control strategy analysis that demonstrates projected annual reductions of direct $PM_{2.5}$ emissions will be greater than five percent of the 2019 base year emissions inventory for each year through 2024, Alaska's projected attainment year.[148] Alaska compared the annual $PM_{2.5}$ reductions required to attain to the annual $PM_{2.5}$ reductions resulting from implementing the control strategy. We note that Alaska projects that SO_2 emissions will not achieve annual reductions greater than five percent of the base year inventory until 2024.

3. EPA's Evaluation and Proposed Action

This section contains a summary of EPA's evaluation and proposed action with regards to meeting the BACM and BACT requirements and the control strategy requirements for areas subject to CAA section 189(d). For EPA's complete evaluation and basis for this proposal, see EPA's Technical Support Document.[149]

a. Residential and Commercial Sources

With respect to NH_3-specific controls, EPA researched potential NH_3 controls for sources in the emissions inventory. EPA did not identify any potential NH_3 controls. According to available literature, most NH_3 controls are designed for the NH_3 manufacturing, fertilizer, coke manufacturing, livestock management industries, as well as to address NH_3 emissions from the use of NO_X controls such as selective catalytic reduction and selective noncatalytic reduction.[150]

EPA similarly reviewed Alaska's determination regarding the NH_3 emissions co-benefits of measures designed to reduce emissions of direct $PM_{2.5}$. First, EPA agrees that measures designed to eliminate all emissions from a source category, such as the wood-stove curtailment program and the requirement to remove or replace uncertified devices, non-pellet fueled hydronic heaters, and coal-fired heating devices by December 31, 2024, or upon sale, lease, or conveyance of an existing building, whichever is earlier, will reduce emissions of direct $PM_{2.5}$ and all plan precursors, including NH_3. Second, EPA reviewed literature regarding NH_3 emissions factors for various sources in the Space Heating source category.[151] Based on this review, EPA confirms Alaska's findings that the solid-fuel fired curtailment program, the woodstove change out program, and measures requiring the removal of uncertified devices and coal heaters, installation of certified woodstoves that meet specific performance standards, sale of dry wood, and conversions of woodstoves to liquid-fuel fired stoves, will reduce NH_3 emissions from the Space Heating source category. Thus, as specified in this section, EPA is proposing to approve certain measures as meeting the BACM/BACT requirement for NH_3 emissions. In other cases, we are proposing to approve ADEC's BACM/BACT analysis that concluded there are no NH_3-specific controls for the emission source categories contributing to $PM_{2.5}$ formation in the Fairbanks Nonattainment Area, but that there are likely to be NH_3 emissions co-benefits of measures designed to reduce emissions of direct $PM_{2.5}$.

i. Solid-Fuel Burning

Alaska adopted a number of regulations based on the BACM review for this source category.[152] We propose to find that Alaska's analysis and adoption of control measures for this source category meet BACM requirements for $PM_{2.5}$ and SO_2 emissions. We also propose to approve Alaska's analysis that found no NH_3-specific emission controls for this source category, We note that we approved as SIP strengthening and federally enforceable many of the control measures submitted as part of the Fairbanks Serious Plan and prior SIP submissions in 2018 as part of a separate action (86 FR 52997, September 24, 2021).

Alaska identified a number of solid-fuel burning control measures that have been adopted by other states and local authorities to identify the full range of potential BACM/BACT measures for this source category. This analysis took into account technical and economic feasibility and other considerations included in the $PM_{2.5}$ Implementation Rule.

Alaska's two-stage woodstove curtailment program, included in the Fairbanks Emergency Episode Plan, adopts the air quality threshold that are at least as stringent as comparable curtailment programs in Idaho, Utah, and California. Alaska accounts for the differences in natural gas availability, seasonal climate conditions, and woodstove changeout incentives in establishing the two-stage thresholds at 20 $\mu g/m^3$ (Stage 1) and 30 $\mu g/m^3$ (Stage 2), respectively. Alaska also has an advisory level set at 15 $\mu g/m^3$ as part of the curtailment program. Alaska has placed further limitations on the NOASH waiver that limit applicability to those that have economic needs based on objective criteria and limited the number of years NOASH waivers are available. Therefore, we propose to approve of the wood stove curtailment program and associated updates to the NOASH waivers/temporary exemption as BACM for the solid-fuel burning source category (*i.e.,* Alaska state regulations 18 AAC 50.075 (e)(3), (f)(2) for $PM_{2.5}$ and SO_2 emissions.

Alaska identified and evaluated as BACM heating device performance standards adopted previously by Missoula County, Montana. Alaska adopted a regulation modeled after the rule in Missoula County. Under 18 AAC 50.077(c), Alaska's regulations require that woodstoves meet emissions standards that are more stringent than EPA's NSPS requirement and also include 1-hour testing requirements to ensure only the lowest-emitting woodstoves are allowed to be sold and installed in the nonattainment area. We propose to find that Alaska adopted measures sufficient to meet BACM for the solid-fuel burning source category (*i.e.,* 18 AAC 50.077 (a–j) for $PM_{2.5}$ and SO_2 emissions.

Alaska's regulation 18 AAC 50.075(f), applicable to the Fairbanks Nonattainment Area, prohibits the operation of a solid fuel-fired heating device emissions when visible emissions exceed 20 percent opacity for more than six minutes in any one hour, except during the first 15 minutes after

[148] State Air Quality Control Plan, Vol II, Chapter III.D.7.9, Table 7.9–6.

[149] Jentgen, M. (September 27, 2022). *Technical support document for Alaska Department of Environmental Conservation's (ADEC) control measure analysis, under 40 CFR 1010(a) and (c).* U.S. Environmental Protection Agency, Region 10, Air and Radiation Division.

[150] U.S. Environmental Protection Agency. (April 1995). *Control and Pollution Prevention Options for Ammonia Emissions.* U.S. EPA Control Technology Center, Document No. EPA–456/R–95–002, available at *https://www3.epa.gov/ttncatc1/dir1/ammonia.pdf#:~:text=The%20various%20control%20technologies%20available%20to%20control%20ammonia,ammonia%20emissions%2C%20demonstrating%20control%20efficiencies%20up%20to%2099%25; see also* Pinder, et al. ''Ammonia emission controls as a cost-effective strategy for reducing atmospheric particulate matter in the Eastern United States,'' *Environmental Science & Technology,* 2007, Volume 41, Number 2, pages 380–86, available at: *https://pubs.acs.org/doi/10.1021/es060379a.*

[151] S. M. Roe et al. (April 2004) *Estimating Ammonia Emissions from Anthropogenic Nonagricultural Sources—Draft Final Report,* available at *https://www.epa.gov/sites/default/files/2015-08/documents/eiip_areasourcesnh3.pdf.*

[152] Alaska state regulations 18 AAC 50.075 (e)(3), (f)(2); 18 AAC 50.076 (d–e), (g), (j–l); 18 AAC 50.077(a–m); 18 AAC 50.078(b); 18 AAC 50.079(f).

initial firing of the device, when the opacity limit must be less than 50 percent. The rule also prohibits visible emissions from crossing property lines. These opacity limits provide a visual indicator for the proper operation of a solid-fuel heating device. EPA is proposing to approve this measure as BACM.

With respect to the alternative emission limit during periods of startup, shutdown, and malfunction, on June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereafter referred to as the ''2015 SSM SIP Action.'' [153] The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemptions and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. In the 2015 SSM SIP Action, EPA recommended States consider seven criteria when developing alternative emission limitations to replace automatic or discretionary exemptions from otherwise applicable SIP requirements. These recommended criteria assure the alternative emission limitations meet basic CAA requirements.

EPA evaluated whether the alternative requirements provided under the Alaska SIP are consistent with the Agency's 2015 SSM SIP Action, including the seven criteria recommended therein. For the reasons explained in this section, EPA finds that the opacity limits are consistent with the recommended criteria set forth in that policy and proposes to approve these provisions into the Alaska SIP as part of this action.

First, the opacity limit for residential woodstoves apply to a narrow subset of source categories (solid fuel-fired heating devices) that use specific control strategies (limits on opacity). Second, application of the 20 percent opacity limit to startup (initial firing) would be technically infeasible because lower temperatures during these periods result in less complete combustion and, therefore, higher opacity. Third, for this source category, EPA believes the startup period is minimized to the greatest extent practicable. The startup period is limited to just fifteen minutes to account for starting the solid fuel-fired burning device. Fifteen minutes represents a reasonable minimum time necessary to adequately start a fire in a solid fuel burning device, while also accounting for the extreme cold temperatures experienced during the winter in Fairbanks.

With respect to the fourth factor, EPA believes that Alaska's control strategy, specifically the episodic curtailment program, would effectively prohibit the use of solid fuel burning devices when poor air quality is anticipated.

Fifth, the 50 percent opacity limit applicable during startup, the requirements for wood sellers to sell dry wood under 18 AAC 50.076, and the solid fuel-fired heating device standards applicable to the Fairbanks Nonattainment Area under 18 AAC 50.077 are designed to ensure that all feasible steps are taken to minimize the impact of emissions during the startup period. With respect to this factor, EPA again notes that the emission source at issue here is subject to curtailment requirements during periods of anticipated high $PM_{2.5}$ ambient air concentration, which would further minimize potential air quality impacts from initial firing.

Similarly, EPA believes the sixth factor—that the alternative emission limit requires operation of the facility in a manner consistent with good practices for minimizing emissions and best efforts regarding planning, design, and operating procedures—supports approval of the State's chosen control strategy. As noted, dry wood requirements and the solid fuel-fired device standards used in conjunction with emission curtailment during air quality episodes represent the best practices available in this context.

With respect to the last criterion for alternative emission limits, Alaska has not included a requirement that affected sources document startup periods using properly signed, contemporaneous logs or other evidence. Given that the rule at issue here generally applies to individual homeowners, rather than industrial sources accustomed to complying with such recordkeeping requirements, EPA believes a recordkeeping requirement would impose an unreasonable burden on both regulators implementing the rule and the regulated community, with virtually no enforcement benefit justifying the burden.

For all of these reasons, EPA proposes to approve (and incorporate by reference) Alaska's rule 18 AAC 50.075(f) as BACM because it is a permanent and enforceable measure that contributes to attainment of the 2006 $PM_{2.5}$ 24-hour NAAQS. This provision includes limits on emissions that apply during all modes of source operation and impose continuous emission controls on solid-fuel heating devices consistent with the requirements of the CAA applicable to SIP provisions. In addition, the provision supports progress toward attainment of the $PM_{2.5}$ NAAQS in the Fairbanks Nonattainment Area.

We also propose to find that the additional removal or render inoperable restrictions placed on non-certified EPA woodstoves, non-pellet outdoor hydronic heaters, coal-fired heating devices, and EPA-certified woodstoves greater than 25 years old meet BACM requirements for $PM_{2.5}$ and SO_2 emissions. These devices will need to be removed or rendered inoperable by December 31, 2024, or if a building or residence with such a device is sold prior to that date (or if a woodfired heating device is 25 years old prior to that date). These include Alaska state regulations 18 AAC 50.077 (l–m). We propose to find that the other solid-fuel burning regulations adopted by Alaska, including device registration under 18 AAC 50.077(h) and dry wood requirements for wood sellers 18 AAC 50.076 are at least as stringent as similar regulations adopted by other states and local authorities, and therefore represent BACM for $PM_{2.5}$ and SO_2 emissions for the solid-fuel burning source category. These include Alaska state regulations 18 AAC 50.076 (d–e), (g), (j–l).

Collectively, we propose to find that Alaska met the BACM requirements for the solid-fuel burning source category for $PM_{2.5}$ and SO_2 emissions. We also propose to approve Alaska's analysis that found no NH_3-specific emission controls for this source category.

ii. Residential and Commercial Fuel Oil Combustion

Based on its BACM analysis, Alaska adopted the regulation at 18 AAC 50.078(b) that imposes a limit of 1,000 parts per million sulfur (diesel #1) for residential and commercial heating. This is a switch from diesel #2 (approximately 2,000 parts per million sulfur) to diesel #1. However, as part of its BACM analysis, Alaska identified 10 states plus large municipal areas that have instituted ULSD home heating requirements and found this measure to

[153] 80 FR 33839.

be technologically feasible and economically feasible at a cost of $1,819 per ton SO_2 removed (SO_2 is a significant precursor in the Fairbanks nonattainment area). Alaska provided a number of community-based considerations were Fairbanks to undergo the switch from diesel #2 to ULSD. These considerations included potential environmental impacts caused by greater transportation requirements required to maintain an adequate ULSD supply through the winter in Fairbanks.

A state must adopt and implement an identified BACM unless the state demonstrates the BACM is either technologically or economically infeasible. Alaska identified the ULSD requirement as BACM for this source category and its own analysis indicates this requirement is feasible. While EPA acknowledges that implementing a fuel switch from #2 to ULSD may be challenging, the challenges identified by Alaska are insufficient to support an infeasibility demonstration. This is particularly so when many jurisdictions have successfully required ULSD. EPA also notes that reducing SO_2 emissions from this source category is particularly important to achieving expeditious attainment because conversions to liquid-fueled heating devices constitute the vast majority of activity in the woodstove changeout program (*see* Emissions Inventory, section III.A of this document). Thus, we propose to disapprove Alaska's determination that the less stringent control measure under 18 AAC 50.078(b) meets BACM requirements for $PM_{2.5}$ and SO_2 emissions. However, we propose to approve Alaska's analysis that found no NH_3-specific emission controls for this source category.[154]

iii. Small Commercial Area Sources

Alaska identified initial BACM requirements for small area source categories as part of the Fairbanks Serious Plan and then updated those findings as part of the Fairbanks 189(d) Plan. Below is a discussion for each of the small area sources identified in the Fairbanks nonattainment area.

Alaska adopted a control measure for coffee roasters at 18 AAC 50.078(d) that required installation of an emissions control device unless the coffee roaster can demonstrate technological or economical infeasibility. As written, the state rule purporting to implement this measure does not appear to be enforceable as a practical matter. The rule does not require use of emissions controls once installed, specify any emission limits, nor monitoring requirements with which the subject sources must comply. In addition, the rule contains a waiver provision based on the facility providing information demonstrating that the control technology is technologically or economically infeasible. This provision is not adequately specific or bounded and, thus, may bar effective enforcement (see 81 FR 58010, 58047, August 24, 2016). In addition, the State must adopt permanent and enforceable control measures for this source category even if certain sources within the source category have existing emissions controls. Therefore, EPA proposes to disapprove Alaska's determination that 18 AAC 50.078(d) satisfies BACM for coffee roasters.

Alaska required commercial charbroilers to submit information to Alaska related to the type, operation, and performance of the device as part of the Fairbanks Serious Plan.[155] Based on the information provided, Alaska then conducted an economic analysis as part of the Fairbanks 189(d) Plan that assessed the cost of installing an available control measure, catalytic oxidizers, on each of the charbroilers in the nonattainment area. The State estimated the cost of installing catalytic oxidizers at $47,786 per ton of $PM_{2.5}$ removed (adjusted to 2019 dollars). Thus, Alaska ultimately determined that BACM is economically infeasible for this source.

While we find that Alaska's economic analysis is a reasonable estimate of the cost of installing one potential emission control device, Alaska did not evaluate all available control measures. Currently available emission control devices include electrostatic precipitators (ESP), wet scrubbers, and filtration.[156] Moreover, Alaska did not explain whether there are chain-driven or underfire charbroilers in the Fairbanks Nonattainment Area, which have different considerations for emission controls.[157] Therefore we propose to disapprove Alaska's evaluation of and BACM determination for charbroilers.

Alaska identified and evaluated the prohibition of used oil burners as a potential BACM-level control measure. Alaska issued a regulation at 18 AAC 50.078(c) requiring owners and operators of used oil burners to provide certain information to assist Alaska in evaluating the feasibility of imposing the prohibition. Ultimately, Alaska did not adopt and submit any controls on used oil burners as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan.

Alaska updated the BACM analysis in the Fairbanks 189(d) Plan to address environmental impacts if used oil burning were restricted in the Fairbanks nonattainment area. According to the State, the only way to dispose of used oil in the nonattainment area is through burning and that limiting this disposal method would likely lead to dumping the used oil on land or water. While one factor the State may consider in demonstrating the technological infeasibility of a measure is environmental impacts, Alaska's evaluation is insufficient to demonstrate that prohibiting used oil burners is technologically infeasible. Notably, illegal dumping of used oil is prohibited under state and Federal laws.[158] Thus, the State and EPA have a basis for preventing or mitigating any environmental impacts that may result from prohibiting used oil burning. Requiring used oil generators to collect and ship used oil to a central disposal facility appears feasible. Since Alaska did not adequately demonstrate that that BACM for this emission source is technologically or economically infeasible, we propose to disapprove Alaska's BACM evaluation and determination for use oil burners.

Similarly, incinerators are another source subject to the information requirements under 18 AAC 50.078(c). However, after receiving information related to this source category, Alaska determined that there are no permitted sources identified as incinerators in the Fairbanks nonattainment area and thus, evaluation of emissions controls is not necessary. We propose to find that Alaska reasonably determined that there were no affected sources for this source category, so BACM does not need to be identified for this source category in the Fairbanks nonattainment area.

[154] We note that Alaska state regulations 18 AAC 50.078 (a–b) were approved as SIP strengthening in our previous action (86 FR 52997, September 24, 2021).

[155] 18 AAC 50.078(c)

[156] *See* Gysel, et al. ''Particulate matter emissions and gaseous air toxic pollutants from commercial meat cooking operations.'' *Journal of Environmental Sciences,*'' 65, 162–170; Yang, et al, ''Transient plasma-enhanced remediation of nanoscale particulate matter in restaurant smoke emissions via electrostatic precipitation'' Particuology 55 (2021): pages 43–37; New York City Department of Environmental Protection (February 2021). *Certified Emission Control Devices for Commercial Under-Fired Char Broilers.* Available at *https://www1.nyc.gov/assets/dep/downloads/pdf/air/approved-under-fired-technology.pdf;* Francis & R.E. Lipinski ''Control of Air Pollution from Restaurant Charbroilers,'' *Journal of the Air Pollution Control Association,* 27:7, pages 643–647, available at: *https://doi.org/10.1080/00022470.1977.10470466.*

[157] Yang, et al, ''Transient plasma-enhanced remediation of nanoscale particulate matter in restaurant smoke emissions via electrostatic precipitation'' Particuology 55 (2021): pages 43–37.

[158] 18 AAC 60.020; 33 U.S.C. 1321; 40 CFR 279.12.

In conclusion, we propose to approve of Alaska's BACM determination for incinerators (18 AAC 50.078(c)(2)). We propose to disapprove Alaska's BACM determination for coffee roasters, charbroilers, and used oil burners for the reasons stated in this section (18 AAC 50.078(c)(1); 18 AAC 50.078(c)(3); 18 AAC 50.078(d)).

iv. Emissions From Mobile Sources

The Fairbanks Moderate Plan and the Fairbanks Serious Plan considered several transportation control measures and other mobile source emission reduction measures, including: HOV lanes; traffic flow improvement program; non-motorized traffic zones; employer-sponsored flexible work schedules; retrofitting the diesel fleet (school buses, transit fleets); on-road vehicle I/M program; heavy-duty vehicle I/M program; State LEV program. Fairbanks has expanded the availability of plug-ins and required electrification of certain parking lots. Fairbanks has also expanded transit service and a commuter van pool program. Alaska also has an anti-idle program. We note that none of these transportation programs have been submitted for SIP approval.

Alaska stated in the Fairbanks Serious Plan and Fairbanks 189(d) Plan submissions that independent studies by NCHRP (a division of the Transportation Research Board) and ASHTO (the American Association of State Highway and Transportation Officials) have documented that while states and communities continue to adopt them, where funding is available, growing experience in lower-48 states has demonstrated emissions benefits are limited. As a result, credit for Transportation Control Measures in SIPs has diminished and additional transportation control measures would provide limited emission reduction benefits. However, this appears to argue that mobile sources are a de minimis source category, which EPA has determined is not a valid basis for dismissing a source category or related control measures from consideration.[159] Alaska did not provide a technological or economic infeasibility demonstration to reject these measures. Therefore, we propose to disapprove Alaska's rejection of available control measures for the mobile source category for $PM_{2.5}$ and SO_2 emissions. However, we propose to approve Alaska's analysis that found no NH_3-specific emission controls for this source category,

b. Summary of EPA's Evaluation of Alaska's Identification and Adoption of BACM

The BACM analysis submitted in the Fairbanks Serious Plan and updated in the Fairbanks 189(d) Plan identified and evaluated potential BACM controls for several source categories. We will discuss in the next section Alaska's approach to apply BACM findings for oil-fired heating devices (1,000 ppmw sulfur content requirement) to emission units at the GVEA Zehnder and UAF Campus Power Plant facilities. EPA proposes to approve Alaska's determination that there are no specific NH_3 emission controls for the sources or source categories in the emissions inventory discussed in this section of the document and that certain measures designed to reduce direct $PM_{2.5}$ emissions also reduce NH_3 emissions. Thus, EPA proposes to determine that Alaska has satisfied the requirement to identify, adopt and implement BACM and BACT for the sources and source categories of NH_3 discussed in this section of the document.

We propose to approve BACM for portions of the solid-fuel burning category and the small commercial area source category and propose to disapprove BACM for the other BACM emission source categories. A summary table of EPA's evaluation is provided bin Table 11. For further details of each specific control measure Alaska analyzed for BACM, see EPA's Control Measure Analysis Technical Support Document.[160]

[159] 81 FR 58010, August 24, 2016, at p. 58082.

[160] Jentgen, M. (September 27, 2022). *Technical support document for Alaska Department of Environmental Conservation's (ADEC) control measure analysis, under 40 CFR 1010(a) and (c).* U.S. Environmental Protection Agency, Region 10, Air and Radiation Division.

TABLE 11—SUMMARY OF EPA'S EVALUATION OF ALASKA'S BACM ANALYSIS

Emissions source category	EPA evaluation of specific BACM measures	State rules relevant to adopted BACM	Specific BACM measures, as identified by Alaska
Solid-fuel burning	Approve: wood-fired heating device requirements and resulting emissions.	18 AAC 50.075, except (d)(2); 18 AAC 50.077, except (g) and (q);.	BACM Measures: 1–30, 33–47, 63, 65–66, R1, R4–R7, R9–R12, R15, R16–R17, R29.
	Disapprove: Wood seller/dry wood requirements; coal-fired heating devices.	18 AAC 50.076(k); 18 AAC 50.079(f).	BACM Measures: 31–32; 48–49.
Residential and commercial fuel oil combustion.	Approve: pot burners, waste oil; fuel oil boilers.	.....	BACM Measures: 52–53, 61–62.
	Disapprove: ULSD as heating oil	18 AAC 50.078(b)	BACM Measure: 51.
Small commercial area sources	Approve: incinerators (no sources identified).	18 AAC 50.078(c)	BACM Measures: 69.
	Disapprove: coffee roasters; charbroilers; used oil burners.	18 AAC 50.078(d)	BACM Measures: 67–68; 70.
Energy efficiency measures	Disapprove: weatherization and energy efficiency.	.....	BACM Measure: 64.
Emissions from mobile sources	Approve: CARB standards; school bus retrofits; road paving.	.....	BACM Measures: 54–56, 58, 59.
	Disapprove: Other transportation measures; vehicle idling.	.....	BACM Measures: 57, 60, R20.

c. Alaska's Identification and Adoption of BACT

i. Chena Power Plant

We propose to disapprove Alaska's BACT determination for $PM_{2.5}$ and SO_2 controls for the four coal-fired boilers. For $PM_{2.5}$, Alaska noted that the source currently uses the baghouse to achieve 99.9% capture efficiency, but did not definitively determine this control was required as BACT or submit for SIP approval an enforceable requirement to operate the baghouse. Operation of the baghouse to achieve 99.9% capture efficiency is likely to be BACT for $PM_{2.5}$ for this source, but the State must revise the SIP to include an enforceable requirement to operate the baghouse to achieve this level of control before we can determine whether BACT requirements are satisfied. Therefore, EPA is proposing to disapprove Alaska's BACT determination for $PM_{2.5}$ for the four coal-fired boilers at the Chena Power Plant.

For SO_2, Alaska has not sufficiently evaluated all of the available control technologies, particularly the better performing SO_2 control technologies that EPA has emphasized in previous comments.[161] Alaska's economic infeasibility demonstrations are also insufficient. Most significantly, Alaska's cost analyses for wet flue gas desulfurization (WFGD) and spray-dry absorbers (SDA) were not based on study-level [162] vendor quotes and incorporated unsubstantiated cost variables that likely inflated the cost estimate. Alaska's affordability assessment for DSI lacks necessary information and is unreliable. EPA's complete evaluation of Alaska's cost analysis for SO_2 controls on the coal-fired boilers is included in the docket for this action.[163]

We propose to approve Alaska's analysis that found no NH_3-specific emission controls for the sources at this facility.

TABLE 12—CHENA POWER PLANT, EPA BACT EVALUATION

Chena Power Plant, Aurora Energy, LLC—EPA BACT Evaluation		
Emission source category	Alaska's BACT selection	Rationale for EPA's proposed disapproval
Coal-fired boilers (EUs 4–7).	*$PM_{2.5}$:* N/A ..... *SO_2:* Existing emissions limit; coal content requirement.	*$PM_{2.5}$:* Operation of the baghouse to achieve 99.9% capture efficiency appears to be BACT for $PM_{2.5}$ for this source, but state has not provided an enforceable requirement to operate the baghouse to achieve this level of control. *SO_2:* Alaska's BACT determinations are not sufficient to meet BACT requirements. Additionally, the economic infeasibility demonstration is inadequate.

ii. Doyon-Fort Wainwright

We propose to disapprove Alaska's BACT determination for $PM_{2.5}$ and SO_2 controls for each of the emission sources at the CHPP. Regarding $PM_{2.5}$ controls for the coal-fired boilers and material handling equipment and $PM_{2.5}$ and SO_2 controls for the small and large emergency engines, fire pumps, and generators, and diesel-fired boilers, we find Alaska's BACT findings are

[161] *See* EPA Comments regarding site-specific quotes for high performing SO_2 control technologies, such as a wet scrubber (WFGD), spray dry absorber (SDA), and circulating dry scrubber (CDS); ''EPA Comments on 2020 DEC Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP- Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[162] A study-level cost estimate is one with a level of accuracy of plus or minus 30 percent. This level of accuracy is consistent with what is expected by the Agency in BACT determinations. Refer to the EPA Air Pollution Control Cost Manual, Section 1, Chapter 2, 7th Edition (November 2017) for more information.

[163] Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Aurora Energy, LLC Chena Power Plant as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[163] 57 FR 18070, April 28, 1992.

appropriate. However, Alaska did not include the MRR requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, we are proposing to disapprove the BACM/BACT determination for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. Alaska can rectify this issue by submitting the MRR requirements necessary (such as the requirements included in the current operating permit) to ensure the BACM/BACT requirements are enforceable as a practical matter.

We propose to disapprove Alaska's BACT evaluation and determination for SO_2 emissions controls (installing DSI) for the coal-fired boilers comprising the CHPP. The analyses we received from Alaska and DU do not establish that the best performing control technologies (technologies with better control efficiency than DSI) Alaska identified as potential controls for these emission units are technologically or economically infeasible. Alaska's initial BACT submission did not sufficiently evaluate all of the available control technologies, particularly the better performing SO_2 control technologies that EPA has emphasized in previous comments.[164] Most significantly, Alaska's cost analyses for wet flue gas desulfurization (WFGD), spray-dry absorbers (SDA) and DSI were not based on study-level vendor quotes and incorporated unsubstantiated cost variables that likely inflated the cost estimate. Subsequently, DU submitted additional information that evaluated the costs of these technologies.[165] However, the cost analysis continues to show that the best performing SO_2 control technologies are technologically or economically feasible.[166] EPA's complete evaluation of Alaska's cost analysis for SO_2 controls on the coal-fired boilers is included in the docket for this action.[167]

We propose to approve Alaska's analysis that found no NH_3-specific emission controls for the sources at this facility.

TABLE 13—FORT WAINWRIGHT, EPA BACT EVALUATION

Fort Wainwright, Doyon utilities—EPA BACT evaluation		
Emission source category	Alaska's BACT selection	Rationale for EPA's proposed disapproval
Coal-fired boilers (EUs 1–6)	*$PM_{2.5}$:* Existing full stream baghouse. *SO_2:* Install and operate DSI; coal-sulfur content requirement.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but monitoring, recordkeeping, and reporting (MRR) requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements, other better performing control technologies than DSI are feasible and cost effective.
Diesel-fired oil boilers (27 emissions units).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Large diesel-fired engines, fire pumps, and generators (8 emissions units; greater than 500 horsepower).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Small emergency engines, fire pumps, and generators (41 emissions units).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Material handling sources (6 emissions units; coal prep and ash handling).	*$PM_{2.5}$:* Existing emission limits ..... *SO_2:* n/a	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* n/a.

iii. University of Alaska Fairbanks Campus Power Plant

We propose to disapprove Alaska's BACT determination for $PM_{2.5}$ and SO_2 controls for each of the emission sources at the Fairbanks Campus Power Plant. Regarding $PM_{2.5}$ controls for the dual fuel-fired boiler, backup diesel generator, diesel-fired boilers, and material handling sources; the $PM_{2.5}$ and SO_2 controls for the pathogenic waste incinerator; and the SO_2 controls for the diesel-fired engines, we find Alaska's BACT findings are appropriate. However, Alaska did not submit as part of the Fairbanks Serious Plan the emission limits corresponding to Alaska's SO_2 or $PM_{2.5}$ BACT findings for some emission units,[168] Alaska also did not include the MRR requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, we are proposing to disapprove Alaska's $PM_{2.5}$ BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations.

Alaska can rectify this issue by submitting the enforceable emission limitation and monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter. We note that the MRR requirements for the material handling

[164] *See* EPA Comments regarding site-specific quotes for high performing SO_2 control technologies, such as a wet scrubber (WFGD), spray dry absorber (SDA), and circulating dry scrubber (CDS); ''EPA Comments on 2020 DEC Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP- Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[165] ''Revised Wainwright BACT SO_2 Emission Control Study,'' Doyon Utilities, August 25, 2021, included in docket for this action.

[166] *See* letter from Krishna Viswanathan, Director, Air and Radiation Division, EPA Region 10, to Shane Coiley, Senior Vice President, Doyon Utilities, LLC, and COL Nathan Surry, Commander, U.S. Army Garrison Alaska, October 26, 2021. Included in docket for this action.

[167] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology* analyses submitted for Fort Wainwright-US Army Garrison Alaska (FWA) and Doyon Utilities, LLC (DU) as part of the Fairbanks $PM_{2.5}$ *Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[168] Fuel oil-fired simple cycle gas turbine (EUs 1 and 2); Fuel oil-fired combined cycle gas turbine (EUs 5 and 6).

unit, EU 111, should include the operational requirement that the building doors remain closed at all times that ash loading is occurring. Appropriate MRR conditions should be included to ensure no visible emissions escape the building.

We propose to disapprove Alaska's BACT evaluation and determination for SO_2 controls for the dual fuel-fired boiler. Alaska has not sufficiently evaluated all of the available SO_2 emissions control technologies, as EPA has previously commented.[169] Most significantly, Alaska's cost analyses for wet flue gas desulfurization (WFGD), spray-dry absorbers (SDA) and dry sorbent injection (DSI) were not based on study-level vendor quotes and incorporated unsubstantiated cost variables that likely inflated the cost estimates. Alaska's affordability assessment for DSI lacks necessary information and is unreliable. EPA's complete evaluation of Alaska's cost analysis of SO_2 controls for the coal-fired boilers is included in the docket for this action.[170]

Further, we propose to disapprove Alaska's BACT determination for SO_2 controls for the diesel-fired boilers. Alaska's BACT determination requiring ULSD is appropriate, but the delayed implementation and interim requirement (1000 ppmw) is not supported as BACT. We also propose to disapprove Alaska's BACT evaluation and determination for $PM_{2.5}$ controls for certain diesel-fired engines. EUs 23 and 26 lack operating limits, and a diesel particulate filter on EU 27 is cost effective. For the remaining diesel-fired engines, Alaska's BACT determination is appropriate, but MRR requirements are not submitted as part of the SIP. For additional details on EPA's evaluation of Alaska's cost analysis for $PM_{2.5}$ controls, see EPA's Technical Support Document.

We propose to approve Alaska's analysis that found no NH_3-specific emission controls for the sources at this facility.

TABLE 14—UNIVERSITY OF ALASKA FAIRBANKS CAMPUS POWER PLANT, EPA BACT EVALUATION

University of Alaska Fairbanks Campus Power Plant—EPA BACT Evaluation		
Emission source category	Alaska's BACT selection	Rationale for EPA's proposed disapproval
Dual fuel-fired boiler (Emission units 113).	*$PM_{2.5}$:* Emission limit achieved by use of existing fabric filter. *SO_2:* Existing emissions limit achieved through limestone injection and low sulfur fuel.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements.
Mid-sized Diesel-fired boilers (EUs 3 and 4).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* Sulfur content requirements	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination requiring ULSD is appropriate, but the delayed implementation and interim requirement (1000 ppmw) is not supported as BACT.
Small-sized Diesel-fired boilers (EUs 19–21).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* Sulfur content requirements	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination requiring ULSD is appropriate, but the delayed implementation and interim requirement (1000 ppmw) is not supported as BACT.
Large diesel-fired engine (EU 8)	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Small diesel-fired engines (EUs 23–24, 26–29).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is not sufficient in part, EUs 23 and 26 lack operating limits, and a control device at EU 27 is cost effective. Otherwise, Alaska's BACT determination is appropriate, but MRR requirements are not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Pathogenic waste incinerator (EU 9a).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* ULSD fuel requirement	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.
Material handling sources (EUs 105, 107, 109–111, 114, 128–130).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* n/a	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but specific MRR requirements are required and were not provided. *SO_2:* n/a.

iv. Zehnder Facility

We propose to disapprove Alaska's BACT determination for $PM_{2.5}$ and SO_2 controls for each of the emission sources at the Zehnder facility. Regarding $PM_{2.5}$ controls for the two fuel oil-fired simple cycle gas combustion turbines, two diesel-fired generators, and two diesel fired boilers, we find Alaska's BACT finding are appropriate. However, Alaska did not include the MRR requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, we are proposing to disapprove Alaska's $PM_{2.5}$

[169] *See* EPA Comments regarding site-specific quotes for high performing SO_2 control technologies, such as a wet scrubber (WFGD), spray dry absorber (SDA), and circulating dry scrubber (CDS); ''EPA Comments on 2020 DEC Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP—Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[170] Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the University of Alaska, Fairbanks as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. Alaska can rectify this issue by submitting the monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter.

We propose to disapprove Alaska's BACT evaluation for SO_2 controls for each of the emissions units. Based on Alaska's finding that switching to ULSD is technologically and economically feasible for all area sources, Alaska did not select the best available measure to control SO_2 emissions from this facility. EPA's complete evaluation of Alaska's BACT evaluation is included in the docket for this action.[171]

We propose to approve Alaska's analysis that found no NH_3-specific emission controls for the sources at this facility.

TABLE 15—ZEHNDER FACILITY, EPA BACT EVALUATION

Zehnder facility, Golden Valley Electric Authority—EPA BACT Evaluation		
Emission source category	Alaska's BACT selection	Rationale for EPA's proposed disapproval
Fuel oil-fired simple cycle gas turbine (EUs 1 and 2).	*$PM_{2.5}$:* Existing emissions limit ..... *SO_2:* 1000 ppmw fuel sulfur requirement, by September 1, 2022.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements. Alaska initially identified ULSD (15 ppmw sulfur) fuel as BACT.
Diesel-fired emergency generators (EUs 3 and 4).	*$PM_{2.5}$:* Existing emissions and operating limits. *SO_2:* 1,000 ppmw fuel sulfur requirement, by September 1, 2022.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements. Alaska initially identified ULSD (15 ppmw sulfur) fuel as BACT.
Diesel-fired boilers (EUs 10 and 11)	*$PM_{2.5}$:* Existing emissions limit ..... *SO_2:* 10,00 ppmw fuel sulfur requirement, by September 1, 2022.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements. Alaska initially identified ULSD (15 ppmw sulfur) fuel as BACT.

v. North Pole Power Plant

We propose to disapprove Alaska's BACT determination for $PM_{2.5}$ and SO_2 controls for each of the emission sources at the North Pole Power Plant. Regarding $PM_{2.5}$ controls for the two fuel oil-fired simple cycle gas combustion turbines, two fuel oil-fired combined cycle gas combustion turbines, and large diesel-fired engine and $PM_{2.5}$ and SO_2 controls for the two propane-fired boilers, we find Alaska's BACT findings are appropriate. However, Alaska did not submit as part of the Fairbanks Serious Plan the emission limits corresponding to Alaska's SO_2 or $PM_{2.5}$ BACT findings for some emission units.[172] Alaska also did not submit the MRR requirements needed for determining compliance with all BACT limits or requirements and to make the limits or requirements enforceable as a practical matter. Therefore, we are proposing to disapprove Alaska's $PM_{2.5}$ BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. Alaska can rectify this issue by submitting the emission limits and monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter.

We propose to disapprove Alaska's BACT evaluation for SO_2 controls for the simple cycle gas turbines. Alaska determined that switching to ULSD is technologically and economically feasible for the simple cycle turbines. Alaska did not adequately justify delaying this requirement to October 1, 2023. Nor did Alaska demonstrate that year-round operation was infeasible. Additionally, Alaska did not sufficiently demonstrate how the intermediate measure, limiting sulfur content to 1,000 ppm from October 1, 2020, to October 1, 2023, only during Air Quality Stage Alert 1 and 2 (solid-fuel device curtailment is in effect), is enforceable as a practical matter. EPA's complete evaluation of Alaska's BACT determination is included in the docket.[173]

Further, for SO_2 controls for the combined-cycle turbines, we propose to find that Alaska's BACT determination is appropriate, but Alaska needs to specify in the BACT determination that only ULSD may be used during startup. Alaska can rectify this issue by clarifying this portion of the BACT requirement. For SO_2 controls for the large diesel-fired engine, Alaska lacks the technical justification for not adopting ULSD as BACT. For additional details, see EPA's Technical Support Document.[174]

We propose to approve Alaska's analysis that found no NH_3-specific emission controls for the sources at this facility.

[171] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[172] Fuel oil-fired simple cycle gas turbine (EUs 1 and 2); Fuel oil-fired combined cycle gas turbine (EUs 5 and 6).

[173] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division

[174] Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks $PM_{2.5}$ Nonattainment SIP.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division

TABLE 16—NORTH POLE POWER PLANT, EPA BACT EVALUATION

North Pole Power Plant, Golden Valley Electric Authority—EPA BACT Evaluation		
Emission source category	Alaska's BACT selection	Rationale for EPA's proposed disapproval
Fuel oil-fired simple cycle gas turbine (EUs 1 and 2).	*$PM_{2.5}$:* Existing emission limit, use of low ash fuel, limited operation, and good combustion practices. *SO_2:* Sulfur content requirements	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination requiring ULSD is appropriate, but the delayed implementation and interim requirement (1000 ppmw) is not supported as BACT.
Fuel oil-fired combined cycle gas turbine (EUs 5 and 6).	*$PM_{2.5}$:* Existing emissions limit ..... *SO_2:* Sulfur content requirement—50 ppmw sulfur fuel limit (i.e., ''light straight run fuel'').	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate but need to specify in the BACT determination that only ULSD may be used during startup.
Large diesel-fired engine (EU 7)	*$PM_{2.5}$:* Good combustion practices, positive crankcase ventilation, and limited operation. *SO_2:* Use of fuel that does not exceed 0.05% sulfur by weight.	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is not sufficient to meet BACT requirements. ULSD not adopted, lacks technical justification for rejection of measure.
Propane-fired boiler (EUs 11 and 12).	*$PM_{2.5}$:* Existing emissions limits .... *SO_2:* Use of propane fuel	*$PM_{2.5}$:* Alaska's BACT determination is appropriate, but MRR requirements not provided. *SO_2:* Alaska's BACT determination is appropriate, but MRR requirements not provided.

d. Alaska's Identification and Adoption of Additional Measures and Demonstration of 5% Reduction in Emissions Pursuant to CAA Section 189(d)

The Fairbanks 189(d) Plan included a reevaluation of previously rejected control measures. First, Alaska added a burn down period of 3 hours for solid-fuel heating devices that begins upon the effective date and time of a curtailment announcement. Second, Alaska added specific requirements to document economic hardship as part of a NOASH curtailment program waiver for solid-fuel devices.

As part of its reevaluation of control measures, Alaska provided additional information for a number of control measures considered in the BACM analysis. The Fairbanks 189(d) Plan included additional consideration of banning installation of solid-fuel devices in new construction, limiting heating oil to ultra-low sulfur diesel, dry wood requirements, emissions controls for small area sources, mobile sources, and most stringent measures.[175] However, Alaska did not reevaluate BACT-level controls for stationary sources. Specifically, there were a number of SO_2 control technologies that were evaluated and dismissed under the Fairbanks Serious Plan that were not reconsidered in the Fairbanks 189(d) Plan. Therefore, we propose to find that Alaska has not sufficiently met the requirement under CAA section 189(d) to reevaluate additional measures that could lead to expeditious attainment.

[175] State Air Quality Control Plan, Vol II, Chapter III.D.7.7.12.

Regarding the requirement to demonstrate five percent annual reductions, Alaska included in the Fairbanks 189(d) Plan a control strategy analysis that demonstrates annual reductions of $PM_{2.5}$ are greater than five percent through 2024, Alaska's projected attainment year. However, CAA section 189(d) and 40 CFR 51.1010(c)(4) and (5) require that the control strategy contain not just measures required to achieve five percent annual reductions, but all required BACM and additional measures that collectively achieve attainment as expeditiously as practicable.

As discussed in Section III.D.3 of this document, Alaska did not adopt and implement all available and required control measures as part of the control strategy for either the Fairbanks Serious Plan or Fairbanks 189(d) Plan. Therefore, Alaska did not necessarily adopt and implement all control measures that collectively achieve attainment as expeditiously as possible. Thus, EPA is proposing to disapprove the control strategy included in the Fairbanks 189(d) Plan as not meeting the full requirements of CAA section 189(d) and 40 CFR 51.1010(c).

D. Attainment Demonstration and Modeling

1. Statutory and Regulatory Requirements

Pursuant to CAA sections 188(c) and 189(b) and 40 CFR 51.1003(b) and 51.1011(b), for nonattainment areas reclassified as Serious, the state must submit an attainment demonstration as part of the Serious Plan that meets the requirements of 40 CFR 51.1011. Similarly, pursuant to 40 CFR 51.1003(c), for Serious areas subject to CAA section 189(d) for failing to attain by the Serious area attainment date, the state must submit an attainment demonstration as part of the 189(d) plan that meets the requirements of 40 CFR 51.1011. On September 2, 2020, EPA determined that the Fairbanks Nonattainment Area failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the December 31, 2019, Serious area attainment date. Therefore, EPA is proposing to evaluate any previously unmet Serious area planning obligations based on the current, applicable attainment date appropriate under CAA section 189(d) and not the original Serious area attainment date.[176] In accordance with 40 CFR 51.1011, the attainment demonstration must meet four requirements:

1. Identify the projected attainment date for the Serious nonattainment area that is as expeditious as practicable;

2. Meet the requirements of 40 CFR part 51, appendix W and include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date;

3. The base year for the emissions inventories shall be one of the 3 years

[176] The term ''applicable attainment date'' is defined at 40 CFR 51.1000 to mean: ''the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS, unless EPA has approved an attainment plan for the area to attain such NAAQS, in which case the applicable attainment date is the date approved under such attainment plan. If EPA grants an extension of an approved attainment date, then the applicable attainment date for the area shall be the extended date.''

used for designations or another technically appropriate inventory year if justified by the state in the plan submission; and

4. The control strategies modeled as part of a Serious area attainment demonstration shall be consistent with the control strategies required pursuant to 40 CFR 51.1003 and 51.1010 (including the specific requirements in 40 CFR 51.1010(c) for Serious areas that fail to attain.

Further, in accordance with 40 CFR 51.1011(b)(5), the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. Additionally, all control measures must be implemented no later than the beginning of the year containing the applicable attainment date, notwithstanding BACM implementation deadline requirements in 40 CFR 51.1010.[177]

2. Summary of State's Submission

The State included an attainment demonstration in the Fairbanks Serious Plan, submitted on December 13, 2019.[178] EPA did not take action on the attainment demonstration submitted as part of the Fairbanks Serious Plan. Alaska subsequently withdrew and resubmitted a new attainment demonstration (State Air Quality Plan, Volume II, Chapter III.D.7.9), as part of its Fairbanks 189(d) Plan submission. Alaska also updated its modeling chapter to include State Air Quality Control Plan, Vol. II, Chapter III.D.7.8.14, as part of the Fairbanks 189(d) Plan.

Alaska's attainment demonstration in the Fairbanks 189(d) Plan projects attainment by December 31, 2024. Alaska evaluated the most expeditious attainment date and demonstrated that the earliest the controlling monitor for the nonattainment area at Hurst Road can model attainment of the NAAQS is 2024. Accordingly, Alaska identified December 31, 2024, as the most expeditious attainment date forecasted for the Fairbanks $PM_{2.5}$ nonattainment area, based on currently available data.[179]

Alaska used the modeling platform (*e.g.,* model versions, modeling domain, inputs, parameterizations, initial and boundary conditions) and meteorological episodes previously used for the Fairbanks Moderate Plan and the Fairbanks Serious Plan. For a detailed summary of Alaska's attainment demonstration, see EPA's Fairbanks Modeling Technical Support Document in the docket for this action.[180]

Alaska selected 2019 as the base year for modeling purposes. In consultation with EPA, Alaska decided to use a four-year (2016–2019) time period in the Fairbanks 189(d) Plan to establish the base year value rather than five years. This is because $PM_{2.5}$ levels decreased from 111 μg/m³ in 2015 to a range of 52.8 μg/m³ and 75.5 μg/m³ between 2016–2019. Design values were updated for each of the $PM_{2.5}$ monitor locations in the Fairbanks $PM_{2.5}$ Nonattainment Area (see Table 1 in this document). The new modeling value at the Hurst Road monitor is 64.7 μg/m³, the monitoring site located in the area of maximum concentration.[181] The State could not calculate a base year design value for A Street because measurements began at that site in 2019. Future SIP modeling will include the A Street monitor, which is considered to be a location of maximum $PM_{2.5}$ in Fairbanks.

Finally, Alaska modeled the control strategies included in the Fairbanks 189(d) Plan.[182] By 2024, Alaska anticipates emissions reductions of 2.11 $PM_{2.5}$ tons per episodic day and 5.18 SO_2 tons per episodic day, resulting from implementation of these control measures.

3. EPA's Evaluation and Proposed Action

EPA proposes to find that Alaska's attainment demonstration does not fully meet CAA requirements. As part of the attainment demonstration, the state must identify the projected attainment date that is as expeditious as possible. As discussed in Section III.D.3 of this document, Alaska did not adopt and implement all available control measures. Correct identification of the most expeditious attainment date requires an evaluation based upon expeditious implementation of the required emission controls. Therefore, EPA cannot assess whether Alaska identified the expeditious attainment date for modeling purposes.

The modeling platform the State used for the Fairbanks 189(d) Plan is outdated and does not reflect the current state of scientific knowledge about meteorological and photochemical processes contributing to $PM_{2.5}$ formation. Additionally, there is no quantitative performance evaluation for the North Pole (Hurst Road) monitor because there were not sufficient speciated $PM_{2.5}$ data for the time period of the model performance evaluation. The modeling is based on 2008 meteorological episodes that have not been updated or replaced since development of the Moderate Area SIP.

Therefore, EPA proposes to find that the attainment demonstration in the Fairbanks 189(d) Plan does not meet the requirements of 40 CFR 51.1011(b)(2). For additional details of EPA's evaluation, see the Technical Support Document included in the docket for this action.[183] We note that Alaska is currently engaged in a multi-year effort to develop a new Fairbanks modeling platform, as outlined in State Air Quality Control Plan, Appendix III.D.7.8 of the Fairbanks 189(d) Plan. EPA will continue to support Alaska's modeling efforts and will review updated modeling and attainment analysis when submitted by the State.

EPA approves of the design value Alaska calculated for modeling purposes. For base year modeling purposes, the 64.7 μg/m³ four year average value is appropriate as measured between 2016–2019 at the Hurst Road monitor in the North Pole portion of the Fairbanks Nonattainment Area. The base year emissions inventory Alaska used for its attainment demonstration in the 189(d) Plan represented one of the three years that EPA used to determine that the area failed to attain by the Serious area attainment date. This base year is consistent with the requirements of 40 CFR 51.1011(b)(3).

Finally, EPA is proposing to partially disapprove Alaska's control strategy as not meeting the requirements of CAA section 189(b) and 40 CFR 51.1010. EPA's basis for this proposed disapproval is discussed in detail in Section III.D.3 of this document. Accordingly, the control strategies modeled as part of Alaska's attainment

[177] 40 CFR 51.1011(b)(5).

[178] State Air Quality Plan, Volume II, Chapter III.D.7.9 (version November 19, 2019). See section II.A in this document 58 for a discussion of Alaska's attainment demonstration submitted as part of the Fairbanks Serious Area Plan.

[179] State Air Quality Plan, Volume II, Chapter III.D.7.9.3.

[180] Briggs and Kotchenruther. (August 24, 2022). *Review of Fairbanks Nonattainment Area Modeling in the 2020 State Implementation Plan Submission.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

[181] The official 2017–2019 design value at the Hurst Road site is 69 μg/m³. The 64.7 μg/m³ value reflects the 2017–2019 design value excluding days in 2019 influenced by wildfires. A justification for the adjusted base year for modeling purposes is included in the docket for this action, *see* Alaska Department of Environmental Conservation. (April 14, 2021). *Exceptional Events Waiver Request, For Exceptional $PM_{2.5}$ Events Between May 26, and July 26, 2019, in the Fairbanks North Star Borough, Alaska.* Alaska Department of Environmental Conservation, Air Quality Division.

[182] State Air Quality Plan, Volume II, Chapter III.D.7.9, Table 7.9–5.

[183] Briggs and Kotchenruther. (August 24, 2022). *Review of Fairbanks Nonattainment Area Modeling in the 2020 State Implementation Plan Submission.* U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division.

demonstration are not consistent with the control strategies required pursuant to 40 CFR 51.1003 and 40 CFR 51.1010. For these reasons, EPA proposes to disapprove the modeling attainment requirements in the Fairbanks 189(d) Plan.

E. Reasonable Further Progress

1. Statutory and Regulatory Requirements

Pursuant to CAA section 172(c) and 40 CFR 51.1012 for the Fairbanks Serious Plan and Fairbanks 189(d) Plan, each attainment plan for a $PM_{2.5}$ nonattainment area shall include Reasonable Further Progress (RFP) provisions that demonstrate that control measures in the area will achieve such annual incremental reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors as are necessary to ensure attainment of the applicable $PM_{2.5}$ NAAQS as expeditiously as practicable. As discussed in section I of this document, on September 2, 2020, EPA determined that the Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable December 31, 2019, Serious area attainment date. Therefore, EPA is proposing to evaluate any previously unmet Serious area planning obligations, including RFP and quantitative milestone requirements, based on the current, applicable attainment date appropriate under CAA section 189(d) and not the original Serious area attainment date. In accordance with 40 CFR 51.1012, the RFP plan shall include all of the following:

a. A schedule describing the implementation of control measures during each year of the applicable attainment plan. Control measures for Moderate area attainment plans are required in 40 CFR 51.1009, and control measures for Serious area attainment plans are required in 40 CFR 51.1010.

b. RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated implementation schedule for control measures required by 40 CFR 51.1009 and 51.1010. For purposes of establishing motor vehicle emissions budgets for transportation conformity purposes (as required in 40 CFR part 93, subpart A) for a $PM_{2.5}$ nonattainment area, the state shall include in its RFP submission an inventory of on-road mobile source emissions in the nonattainment area for each milestone year.[184]

c. An analysis that presents the schedule of control measures and estimated emissions changes to be achieved by each milestone year, and that demonstrates that the control strategy will achieve reasonable progress toward attainment between the applicable base year and the attainment year. The analysis shall rely on information from the base year inventory for the nonattainment area required in 40 CFR 51.1008(a)(1) and the attainment projected inventory for the nonattainment area required in 40 CFR 51.1008(a)(2), in addition to the RFP projected emissions required in 40 CFR 51.1012(a)(2).

d. An analysis that demonstrates that by the end of the calendar year for each milestone date for the area determined in accordance with 40 CFR 51.1013(a), pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year. A demonstration of stepwise progress must be accompanied by appropriate justification for the selected implementation schedule.

2. Summary of State's Submission

Alaska included its RFP analysis in State Air Quality Plan, Vol II, III.D.7.10. Initially Alaska submitted an RFP plan in the Fairbanks Serious Plan based on the projected attainment year of 2029. Alaska withdrew and replaced the RFP plan in the Fairbanks 189(d) plan based on the revised 2024 attainment projection.

Regarding the RFP requirements, Alaska included an implementation schedule for each control measure for each source category, see State Air Quality Plan, Vol II, Chapter III.D.7.10, Table 7.10–4. The table presents a start year and the phase-in percentage for each milestone year. Alaska included projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year.[185] Alaska included an analysis that presents the schedule of control measures (Table 7.10–4) and estimated emissions changes to be achieved by each milestone year (Table 7.10–5), and that demonstrates that the control strategy will achieve reasonable progress toward attainment between the applicable base year and the attainment year. Alaska noted that direct $PM_{2.5}$ emission reductions achieved within each milestone year are projected to meet or exceed linear progress toward estimated attainment by 2024 (and through 2026). Meanwhile, progress toward attainment for SO_2 is expected to be non-linear. According to Alaska, this non-linearity in control measure reductions for SO_2 is due to two causes. First, most of the measures designed to reduce direct $PM_{2.5}$ through removal, curtailment or replacement of solid-fuel devices trigger a shift in heating energy to higher SO_2 emitting heating oil. Second, decreases in SO_2 emissions offsetting these increases are the result of the shift from diesel #2 to diesel #1 fuel oil for space heating by 2023, and point source SO_2 BACT controls that phase in from 2021–2024. Thus, control measure emission reductions for SO_2 exhibit stepwise rather than linear progress. NH_3 reductions meet linearly-established targets in the base year and 2024 attainment year, but to population growth, linear progress is not met in 2023 and 2026 for NH_3. We note that Alaska is not taking credit for NH_3 emission reductions co-benefits resulting from the implementation of control measures for $PM_{2.5}$ and SO_2 emissions.

3. EPA's Evaluation and Proposed Action

Alaska withdrew and replaced the State Air Quality Control Plan, Chapter III.D.7.10, as part of submission of the Fairbanks 189(d) Plan. The RFP provisions included in the Fairbanks 189(d) plan are based on Alaska's proposed control strategy designed to meet the requirements of CAA sections 189(b) and 189(d), and 40 CFR 51.1010(a) and (c), based on a projected attainment date of 2024. Therefore, the approvability of the plan with respect to RFP requirements is dependent, in part, on the approvability of the control strategy and attainment demonstration. Specifically, to meet the RFP requirement, the State must include a schedule describing the implementation of control measures required by 40 CFR 51.1010.[186] Moreover, the RFP projected emissions for each milestone year must be based on the anticipated implementation schedule for control measures required by 40 CFR 51.1010.[187] Thus, if the control strategy does not include all required control measures, then the RFP provisions will necessarily be deficient.

Similarly, the purpose of the RFP requirement is to demonstrate that the attainment plan will achieve annual incremental reductions in emissions between the base year and the attainment date that is as expeditious as

[184] For an evaluation of motor vehicle emission budgets, see section III.H of this document.

[185] State Air Quality Control Plan, Vol. III, Appendix III.D.7.10 (corresponding Excel spreadsheets).

[186] 40 CFR 51.1012(a)(1).

[187] 40 CFR 51.1012(a)(2).

practicable.[188] Accordingly, if the attainment year does not reflect the most expeditious year practicable, then the State's evaluation of RFP will not accurately project progress towards the most expeditious attainment year. As discussed in sections III.C and III.D. of this document, EPA is proposing to disapprove Alaska's attainment demonstration and to partially disapprove Alaska's control strategy. Therefore, the RFP provisions in the Fairbanks 189(d) Plan are, by extension, deficient. Therefore, EPA is proposing to disapprove the Fairbanks 189(d) Plan with respect to RFP requirements.

F. Quantitative Milestones

1. Statutory and Regulatory Requirements

In accordance with CAA section 189(c)(1) and 40 CFR 51.1013, the state must submit in each attainment plan for a $PM_{2.5}$ nonattainment area specific quantitative milestones that provide for objective evaluation of RFP toward timely attainment of the applicable $PM_{2.5}$ NAAQS in the area.

For an attainment plan submission for a Serious area subject to the requirements of CAA section 189(d) and 40 CFR 51.1003(c), each plan shall contain quantitative milestones (QM) that provide for objective evaluation of reasonable further progress toward timely attainment of the applicable $PM_{2.5}$ NAAQS in the area. At a minimum, each plan for an area subject to CAA section 189(d) must include QMs for tracking progress achieved in implementing the SIP control measures by each milestone date.

Regarding the specific timeframe for the Fairbanks $PM_{2.5}$ Nonattainment Area, per 40 CFR 51.1013(a)(4), each attainment plan submission for an area designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ NAAQS before January 15, 2015, shall contain quantitative milestones to be achieved no later than 3 years after December 31, 2014, and every 3 years thereafter until the milestone date that falls within 3 years after the applicable attainment date.

2. Summary of State's Submission

Similar to the RFP requirement discussed in section III.E of this document, Alaska revised submitted updated QM provisions as part of the Fairbanks 189(d) Plan. The Fairbanks 189(d) Plan, projecting attainment by 2024, contained a QM for each control measure to be achieved every three years until attainment is achieved (and three years thereafter), State Air Quality Plan, Vol II, III.D.7.10, Table 7.10–4. The State created milestones for the woodstove changeout program to measure progress for that program by the number of changeouts expected for each milestone year. The State created milestones for other control measures to evaluate progress for those measures based on an expected percentage of combined penetration or the expected compliance rate. For the woodstove curtailment program, the State estimated the compliance rate to achieve 30 percent by 2020; 45 percent by 2023; and 50 percent by 2026. Notably, a number of control measures are not fully phased-in by the attainment date. These measures include the woodstove curtailment program, commercial dry wood requirements, removal of coal devices requirements, and the revised NOASH/exemption requirements.

3. EPA's Evaluation and Proposed Action

Similar to the RFP requirements, Alaska withdrew and resubmitted State Air Quality Control Plan, Vol II, Chapter III.D.7.10 as part of submission of the Fairbanks 189(d) Plan. The QMs are based on Alaska's proposed control strategy and attainment date of 2024. Therefore, the approvability of the QMs is dependent, in part, on the approvability of the control strategy and modeled attainment demonstration. Specifically, if the control strategy does not include all required control measures, then the QMs will necessarily be deficient. Alaska will need to submit a new attainment demonstration with new projected attainment date, and by extension, reevaluate whether the QMs for each milestone year are appropriate. Here, the control strategy does not contain all required control measures. Therefore, the QMs are, by extension, deficient and EPA is proposing to disapprove the State Air Quality Control Plan, Vol II, Chapter III.D.7.10, with respect to QMs.

G. Contingency Measures

1. Statutory and Regulatory Requirements

In accordance with CAA section 172(c)(9) and 40 CFR 51.1014, contingency measures are additional control measures to be implemented following a determination by EPA that a state or area has failed: (1) to meet RFP requirements, (2) to meet any quantitative milestone, (3) to submit a quantitative milestone report, or (4) to attain the $PM_{2.5}$ standard by the applicable attainment date.[189] In accordance with CAA section 172(c)(9) and 40 CFR 51.1014, a Serious area attainment plan and a 189(d) plan must include continency measure provisions that meet the following requirements:

a. Each contingency measure shall take effect with minimal further action by the state or EPA following a determination by EPA that any of the triggering events occurs.

b. Contingency measures shall consist of control measures that are not otherwise included in the control strategy or that achieve emissions reductions not otherwise relied upon in the control strategy.

c. Each contingency measure shall specify the timeframe within which its requirements become effective following an applicable determination by EPA.

d. The attainment plan submission shall contain a description of the specific trigger mechanisms for the contingency measure and specify a schedule for implementation.

In addition to the regulatory requirements listed in this section, longstanding EPA guidance indicates that contingency measures should result in emission reductions approximately equivalent to one year's worth of emissions reductions necessary to achieve RFP for the area. By extension, given this linkage between contingency measures and RFP, the contingency measures ought to achieve emissions reductions of both direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors. In the rare event that an area is unable to identify contingency measures to account for approximately 1 year's worth of emissions reductions, the state should provide a reasoned justification why the smaller amount of emissions reductions is appropriate.[190]

A state can rely on contingency measures that achieve emissions reductions on sources located outside the nonattainment area, but within the state provided that the measures on sources outside the designated nonattainment area are demonstrated to produce the appropriate air quality impact within the nonattainment area. The state cannot rely on already implemented Federal, state, or local measures to satisfy the contingency measure requirement.[191] To be approvable, contingency measures have to be both conditional and prospective such that emissions reductions will occur after a triggering event, such as

[188] 40 CFR 51.1012(a).

[189] 81 FR 58010, August 24, 2016, at pp. 58092–58093.

[190] *Id.* at 58067 and 58093.

[191] *Bahr* v. *EPA,* 836 F.3d 1218, at pp. 1235–36 (9th Cir. 2016).

EPA's determination that the area failed to attain by the applicable attainment date. Furthermore, if the contingency measures themselves do not provide for emissions reductions equal to one-year's worth of RFP, the deficiency cannot be made up through additional emissions reductions projected due to already implemented measures even if the state has not relied upon those emission reductions for the purpose of meeting the RFP or attainment demonstration requirements.[192]

With regard to the timing for implementing contingency measures, EPA reiterates that the purpose of contingency measures is to ensure that corrective measures are put in place automatically at the time that EPA makes a determination that an area has failed to meet RFP, failed to meet any quantitative milestone, failed to submit a quantitative milestone report or failed to meet the NAAQS by the applicable attainment date. These measures are intended to provide additional emission reductions during the period that the state and EPA take necessary action to cure the deficiency through subsequent SIP submissions. For any nonattainment area, EPA is required to determine within 90 days after receiving a state's QM Report, and within 6 months after the attainment date for an area, whether the state has met its statutory obligations for demonstrating RFP or attaining the standard, as appropriate. EPA expects that contingency measures should become effective within 60 days of EPA making its determination with respect to any of the four triggers for such measures.

2. Summary of State's Submission

As a threshold matter, Alaska submitted a revision to state regulations at 18 AAC 50.030(c) such that all contingency measures included in nonattainment area plans are triggered based on the effective date of an EPA finding that a particular nonattainment area failed: (i) to attain the applicable NAAQS by the applicable attainment date; (ii) to meet a quantitative milestone; (iii) to submit a required quantitative milestone report; or (iv) to meet a reasonable further progress requirement.

In addition, Alaska included in the Fairbanks Serious Plan a new rule section 18 AAC 50.077(n) as part of the new wood-fired heating device regulations, that created two contingency measures. When initially adopted the measures were designed to be triggered upon any of the determinations listed in 40 CFR 51.1014(a). The first measure requires owners of older EPA-certified wood fired heating devices with an emission rating above 2.0 grams per hour (g/hr), manufactured at least 25 years prior to the effective date of an EPA finding that triggers this measure, to remove the device upon the sale of a property or by December 31, 2024, whichever is earlier. The second measure requires owners of EPA-certified devices that were manufactured less than 25 years prior to EPA finding to remove the device prior to reaching 25 years from the date of manufacture. Control measures targeting the older EPA certified devices will provide additional emission reduction benefits beyond Alaska's current home heating control measures. On September 24, 2021, EPA approved these two measures as SIP strengthening (86 FR 52997), but EPA did not determine whether these measures met contingency measure requirements.

The Fairbanks 189(d) Plan included an additional contingency measure, as a revision to State Air Quality Control Plan, Vol II, Chapter III.D.7.12 (Fairbanks Emergency Episode Plan) that, if triggered, lowers the air quality woodstove curtailment Stage 2 threshold from 30 $\mu g/m^3$ to 25 $\mu g/m^3$. The approach the State used to calculate emission benefits that would result from the lower curtailment threshold was consistent with the approach it used to estimate emission benefits resulting from reductions of the curtailment program thresholds for Stage 1 from 25 $\mu g/m^3$ to 20 $\mu g/m^3$ and Stage 2 from 35 $\mu g/m^3$ to 30 $\mu g/m^3$, respectively. The State estimated this amount of emission reductions based on a weighting of the 35 modeling episode days under which either Stage 1, Stage 2, or no alert restrictions would have occurred based on measured $PM_{2.5}$ concentrations for each episode day.

In the Fairbanks 189(d) Plan submission, Alaska estimated that the combined $PM_{2.5}$ emission benefits will be minimal if the measures are triggered prior to 2024 but then will be 0.08 tons per day by 2024. Based on data presented earlier in the Fairbanks 189(d) Plan, Table 7.10–5, the State reasoned that one year of RFP for the area under the Plan would be 0.24 tons per day of $PM_{2.5}$ emission reductions. In addition, the State provided information related to additional emission reductions based on funding anticipated under the 2019–2020 Targeted Airshed Grant program (for which benefits were not included in the attainment and RFP analysis). We again note here that the State cannot rely on already implemented Federal, state, or local measures to satisfy the contingency measure requirement.[193] Nonetheless, Alaska estimated an additional 0.66 tons per day of incremental $PM_{2.5}$ reductions would result from Wood Stove Change Out Program expansion and Curtailment Program enhancements by 2024. Summing these benefits yields a total of 0.86 tons per day of direct $PM_{2.5}$ emission reductions. After accounting for measure benefits overlap, the State calculated that combined reductions of 0.53 tons per day of $PM_{2.5}$ reductions could result from the contingency measures and other additional measures, and this amount would be more than one year of RFP (0.24 tons per day of $PM_{2.5}$). As shown in the bottom row if Table 7.10–7, these excess reductions above the one-year advancement target were estimated to be 0.29 tons per day.

Moreover, the State's modeled attainment demonstration projected attainment in 2024, and included the finding that the modeled 2024 design value at the controlling monitor within the nonattainment area would be 31 $\mu g/m^3$, leaving a margin between this modeled value and the 2006 24–hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. According to Alaska, this projected margin, combined with the surplus emission benefits from the additional woodstove changeout and curtailment measures discussed in section III.C of this document, would provide the emission reductions more than the equivalent of one year's worth of RFP in the nonattainment area.

3. EPA's Evaluation and Proposed Action

EPA has reviewed the State's contingency measures included in the Fairbanks Serious Plan and Fairbanks 189(d) Plan. Regarding Alaska's revisions to 18 AAC 50.030(c) to incorporate central triggering mechanisms for contingency measures, we propose to find that this regulation is consistent with 40 CFR 51.1014(a). The regulation mirrors the triggering events in 40 CFR 51.1014(a). An evaluation of the specific contingency measures submitted under each nonattainment plan is included in this section. In summary, EPA proposes to approve the contingency measure submitted as part of the Fairbanks 189(d) Plan as SIP-strengthening, but proposes to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) Plan submissions as not meeting the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014.

[192] *Assoc. of Irritated Residents* v. *EPA,* 10 F.4th 937, at pp. 946–947 (9th Cir. 2021).

[193] *Bahr* v. *EPA,* 836 F.3d 1218, at pp. 1235–36 (9th Cir. 2016).

a. Fairbanks Serious Plan

The first measure included in the Fairbanks Serious Plan requires owners of older, less efficient EPA-certified wood fired heating devices to remove the device upon the sale of a property or by December 31, 2024, whichever is earlier. The second measure requires owners of EPA-certified devices that were manufactured less than 25 years prior to EPA's finding to remove the device prior to reaching 25 years from the date of manufacture. We note that, EPA approved these two measures as SIP strengthening on September 24, 2021, (86 FR 52997).

Trigger mechanism: These two contingency measures are subject to Alaska's regulation 18 AAC 50.030(c) that is consistent with the triggers in 40 CFR 51.1014(a).

Measures not otherwise included in control strategy: At the time of adoption and submission to EPA, these measures were not otherwise included in the control strategy. These measures address the largest emissions source in the nonattainment area and were not otherwise included in the Fairbanks Serious Plan's control strategy. At the time of adoption and submission to EPA, these measures were expected to produce emissions benefits in addition to the projected emissions reductions under the control strategy and were not required to meet RFP or to attain by the attainment date. However, these measures were triggered on October 2, 2020, the effective date of EPA's determination that the Fairbanks Nonattainment Area failed to attain the NAAQS by the Serious area attainment date.

Implementation schedule: The contingency measures are effective once triggered under 18 AAC 50.030(c). While the majority of emissions reductions are expected by 2024, components of the measure require immediate action, including when a device is sold, leased, or conveyed as part of an existing building) or removal once the device reaches a certain age based on the date of manufacture. The final deadline for removal of all EPA-certified stoves older than 25 years is December 31, 2024. We note that the emission reductions that would occur immediately, or within the first year of implementation, after the measures are triggered are not equal to 1 years' worth of RFP.

One year's emissions reductions: Control measures targeting the older EPA certified devices will provide additional emission reduction benefits beyond Alaska's current home heating control measures. The contingency measures are expected to provide $PM_{2.5}$ reductions of 0.01 tons per day (averaged over the modeling episodes) in its first year of implementation and each year thereafter through 2024.[194] Alaska further calculated the emissions benefits of 0.025 tons per day that would begin in 2024 in the State Air Quality Control Plan, Appendix III.D.7.10, and 0.15 tons per day of direct $PM_{2.5}$ can be achieved by 2029 based on a 70 percent penetration/compliance rate.[195] To attain by the projected attainment date, Alaska projected 1 years' worth of emissions reductions are 0.24 tons per day. Therefore, the emissions reductions achieved through these contingency measures would not be sufficient to demonstrate 1 years' worth of RFP. Further we note that Alaska did not evaluate whether these contingency measures would achieve emission reductions for the applicable $PM_{2.5}$ plan precursors, including SO_2 and NH_3.

Conclusion: Because these measures do not meet all of the statutory and regulatory requirements for contingency measures, we propose to disapprove these measures as meeting the contingency measure requirement under CAA section 172(c)(9) or 40 CFR 51.1014.

b. Fairbanks 189(d) Plan

The contingency measure Alaska identified as part of the Fairbanks 189(d) Plan increases the stringency of the curtailment program for wood-fired heating devices, a critical element of the Fairbanks attainment plan. The contingency measure would lower the Stage 2 curtailment threshold from 30 to 25 $\mu g/m^3$, under the Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol II, Chapter III.D.7.12.

Trigger mechanism: This contingency measure, specified under the Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol II, Chapter III.D.7.12, is subject to Alaska's regulation 18 AAC 50.030(c), which includes the trigger mechanisms described in 40 CFR 51.1014(a).

Measures not otherwise included in control strategy: this measure addresses the largest emissions source in the nonattainment area and was not otherwise included in the Fairbanks 189(d) Plan's control strategy. Thus, this measure, if triggered, is expected to produce emissions benefits in addition to the project emissions reductions under the control strategy.

Implementation schedule: The contingency measures are effective once triggered under 18 AAC 50.030(c) and can be implemented with minimal delay.

One year's emissions reductions: EPA projects an emissions benefit of 0.08 tons per day when this contingency measure becomes effective. We again note that Alaska projects one year of RFP advancement is 0.24 tons per day. Therefore, this measure is not equal to approximately 1 years' worth of RFP. This measure meets many requirements for contingency measures, but does not provide adequate emissions reductions of direct $PM_{2.5}$ or $PM_{2.5}$ plan precursors. In addition, Alaska has not adequately evaluated whether this measure would achieve emissions reductions for $PM_{2.5}$ precursors (SO_2 or NH_3) approximately equivalent to 1 years' worth of RFP or whether additional contingency measures for $PM_{2.5}$ precursors (SO_2 or NH_3) are necessary to do so. Nor has Alaska provided a reasoned explanation for why reductions in $PM_{2.5}$ precursors (SO_2 or NH_3) via contingency measures is impracticable.

Conclusion: The contingency measure included in the Fairbanks 189(d) Plan, lowering the Stage 2 curtailment threshold from 30 to 25 $\mu g/m^3$, will improve the current SIP and so we propose to approve the measure under the Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol II, Chapter III.D.7.12, as SIP-strengthening.

However, this measure does not provide adequate emissions reductions of direct $PM_{2.5}$ or $PM_{2.5}$ plan precursors. Thus, the contingency measures fall short of serving the statutory and regulatory purposes of continuing air quality improvement. Alaska did not provide a reasoned justification for why the smaller amount of emissions reductions is appropriate. Additionally, while the contingency measures address direct $PM_{2.5}$ emissions (and possibly NH_3 emissions) from the source category that emits the most direct $PM_{2.5}$, Alaska has not adequately evaluated contingency measures for all $PM_{2.5}$ precursors (SO_2 or NH_3) or provided a reasoned explanation for why reductions in $PM_{2.5}$ precursors (SO_2 or

[194] Fairbanks SIP Contingency Measure Emission Reductions, submitted to EPA on August 17, 2020, included in the docket for this proposed action. Alaska stated that a compliance rate of 10% was estimated based on the frequency these older stoves/inserts would be identified and replaced through residential home resales. Alaska identified data published in the Fairbanks Community Research Quarterly, that Fairbanks Borough averaged 1,215 home sales per year from 2017–2019, the most recent period of available data. Accounting for the fraction that are re-sales (that trigger a compliance mechanism) and within the nonattainment area, along with the fraction of homes with 25-year old wood stoves, yielded the estimated ''compliance'' rate of 10%.

[195] State Air Quality Control Plan, Appendix III.D.7.10

NH_3) via contingency measures is impracticable.

For these reasons, we are proposing to disapprove the contingency measures in the Fairbanks Serious Plan and Fairbanks 189(d) Plan as meeting the requirements of CAA section 172(c)(9) and 40 CFR 51.1014. We note that the woodstove device regulations under 18 AAC 50.077(n) are already federally enforceable, as they were approved in our September 24, 2021, final rule (86 FR 52997), and have been implemented based on EPA's finding that the Fairbanks Nonattainment Area failed to attain by the Serious attainment date.[196]

H. Motor Vehicle Emission Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the goals of the SIP to eliminate or reduce the severity and number of violations of the NAAQS and achieve expeditious attainment of the standards. Conformity to the goals of the SIP means that such actions will not (1) cause or contribute to any new violation of a NAAQS, (2) increase the frequency or the severity of an existing violation, or (3) delay timely attainment of any NAAQS or interim milestones.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR 51.390 and part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, FHWA and FTA to demonstrate that an area's long-range transportation plan (''transportation plan'') and transportation improvement program (TIP) conform to the applicable SIP. This demonstration is typically made by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in all control strategy plans. An attainment plan for the $PM_{2.5}$ NAAQS should include budgets for the attainment year and each required QM year, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations (40 CFR 93.118(e)(4)(v)).

Attainment plans for $PM_{2.5}$ NAAQS should typically identify motor vehicle emission budgets for each QM year and the attainment year for direct $PM_{2.5}$ and NO_X (*See* 40 CFR 93.102(b)(2)(iv)), and for VOCs, SO_2, and NH_3, if certain criteria in the transportation conformity rule are met (*See* 40 CFR 93.102(b)(2)(v)). All direct $PM_{2.5}$ emission budgets in an attainment plan should include direct $PM_{2.5}$ motor vehicle emissions from tailpipe, brake wear, and tire wear. A state must also consider whether re-entrained paved and unpaved road dust are significant contributors and should be included in the direct $PM_{2.5}$ budget. *See* 40 CFR 93.102(b) and 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).[197]

2. Summary of State's Submission

The Fairbanks 189(d) Plan provided budgets for direct $PM_{2.5}$ for each of the upcoming RFP years (2020, 2023, and 2026) and the 2024 attainment year identified by Alaska. Budgets for NO_X were not included because Alaska demonstrated that NO_X does not significantly contribute to $PM_{2.5}$ formation in the Fairbanks Nonattainment Area, see Section III.B in this document. For SO_2 and NH_3, in accordance with 40 CFR 93.102(b)(2)(v), transportation-related emissions of these precursors have not been found to be significant.

The direct $PM_{2.5}$ budgets were calculated using the MOVES2014b vehicle emissions model, which was the latest on-road mobile sources emissions model available at the time Alaska started developing the attainment plan inventory. Alaska used local fleet and fuel inputs and the Fairbanks Area Surface Transportation Planning (FAST Planning) travel demand model to generate local vehicle travel activity estimates over the six-month nonattainment season (October through March). The average winter day emissions were used by Alaska to set the motor vehicle emissions budgets. Exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area occur almost exclusively during the winter months. Alaska executed MOVES2014b with locally developed inputs representative of wintertime calendar year 2019 conditions. Table 17 summarizes the regional average winter day on-road vehicle $PM_{2.5}$ emission budgets and the related CAA milestone for the nonattainment area.

TABLE 17—MOTOR VEHICLE EMISSION BUDGETS BY MILESTONE YEAR

Calendar year	On-road budgets (tons per day)	CAA-related milestone
2020	0.203	RFP.
2023	0.173	RFP.
2024	0.163	Attainment.
2026	0.146	RFP.

Source: Air Quality Control Plan, Vol II, Chapter III.D.7.14, Table 7.14–3.

3. EPA's Evaluation and Proposed Action

We have evaluated the motor vehicle emissions budgets developed by Alaska against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the approvability of the budgets according to the process in 40 CFR 93.118(f)(2). EPA finds that the budgets were clearly identified and precisely quantified using MOVES2014b, with appropriate consultation among Federal, State, and local agencies. However, budgets must be considered with other emissions sources, consistent with applicable RFP and attainment requirements, and be consistent with and clearly related to the emissions inventory and the control measures in the SIP, see 40 CFR 93.118(e)(4)(iv) and (v). Since the budgets must account for other control measures to determine the appropriate motor vehicle budgets, and the control strategy does not include all required control measures, then the budgets will necessarily be deficient. Therefore, EPA is proposing to disapprove the budgets for the Fairbanks $PM_{2.5}$ Nonattainment Area.

I. Nonattainment New Source Review Requirements Under CAA Section 189(e)

CAA section 189(e) specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.[198] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Serious $PM_{2.5}$ nonattainment area include, at minimum, the requirements of a nonattainment NSR permit program meeting the requirements of CAA sections 172(c)(5) and 189(b)(3). We

[196] 85 FR 54509, September 2, 2020. Effective October 2, 2020.

[197] For further information on transportation conformity rulemakings, policy guidance and outreach materials, *see* EPA's website at *http://www3.epa.gov/otaq/stateresources/transconf/policy.htm.*

[198] General Preamble, 57 FR 13498, April 16, 1992, at pp. 13539 and 13541–13542.

note that EPA approved the nonattainment new source review element of the Fairbanks Serious Plan on August 29, 2019 (84 FR 45419). Alaska adopted by reference the 40 tons per year significant emissions rates for NO_X, SO_2, and VOC set by EPA, and also established a significant emissions rate of 40 tons per year for NH_3 as a precursor for $PM_{2.5}$, consistent with the thresholds of the other $PM_{2.5}$ precursors. We propose to find that these are reasonable thresholds for an NNSR program and is adequate for purposes of meeting requirements in the 189(d) Plan under 40 CFR 51.003(c)(1)(viii).

IV. Consequences of a Disapproval

This section explains the consequences of a disapproval of a required SIP. The Act provides for the imposition of sanctions and the promulgation of a Federal implementation plan (FIP) if a state fails to submit and fails to obtain EPA approval of a plan revision that corrects the deficiencies identified by EPA in its disapproval.

A. The Act's Provisions for Sanctions

If EPA finalizes disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, CAA section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rule of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction imposed at 18 months following a disapproval is 2:1 offsets for sources subject to the new source review requirements under CAA section 173. If the deficiency remains uncorrected at 24 months after the disapproval a second sanction is imposed consisting of a prohibition on the approval or funding of certain highway projects.[199] EPA also has authority under CAA section 110(m) to impose sanctions on a broader area but is not proposing to impose sanctions on a broader area in this action. The imposition of sanctions is avoided or stopped by a final EPA rulemaking action finding that the state corrected the SIP deficiencies resulting in the disapproval.

B. Federal Implementation Plan Provisions That Apply if a State Fails To Submit an Approvable Plan

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or finalizes disapproval of the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than two years from the effective date of the disapproval unless the State corrects the deficiency and EPA approves the plan or plan revisions before that date.[200]

C. Ramifications Regarding Transportation Conformity

One consequence of EPA action finalizing disapproval of a control strategy SIP submission is a conformity freeze.[201] If EPA finalizes the disapproval of the attainment demonstration SIP without a protective finding, a conformity freeze will be in place as of the effective date of the disapproval.[202] The area's MPO, FAST Planning, produces the long-range 20-year metropolitan transportation plan and the short-range transportation plan. During a conformity freeze, no new transportation projects in the Fairbanks $PM_{2.5}$ Nonattainment Area may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found to be adequate or the attainment demonstration is approved and conformity to the revised attainment demonstration SIP is determined. Only projects in the first four years of the currently conforming transportation plan and transportation improvement program may be found to conform while the conformity freeze is in effect. If the SIP deficiency is not remedied after 24 months, highway sanctions would be imposed and a conformity lapse occurs.

V. Summary of Proposed Action

A. Proposed Approval

In this action, EPA is proposing to approve the submitted revisions to the Alaska SIP as meeting the following Serious Plan and CAA section 189(d)[203] required elements for the 2006 24-hour $PM_{2.5}$ NAAQS Fairbanks Nonattainment Area:

1. The 2019 base year emissions inventory (CAA section 172(c)(3);[204] 40 CFR 51.1008(c)(1)) for areas subject to CAA section 189(d).

2. The State's $PM_{2.5}$ precursor demonstration for NO_X and VOC emissions (CAA section 189(e);[205] 40 CFR 51.1006(a)).

3. Partial approval of the control strategy as meeting BACM requirements under CAA section 189(b)(1)(B)[206] and 40 CFR 51.1010(a) for the solid-fuel home heating device source category, specific regulations under 18 AAC 50.075 through 077, and Fairbanks Emergency Episode Plan.

EPA is proposing to approve the submitted sections of the State Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective January 8, 2020:

4. Volume II, Chapter III.D.7.11 Contingency Measures.

EPA is proposing to approve the submitted chapters of the Alaska Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective December 25, 2020:

5. Volume II, Chapter III.D.7.06 and Volume III Chapter III.D.7.06 Emissions Inventory for purposes of the 2019 base year emissions inventory.

6. Volume II, Chapter III.D.7.07 and Volume III Chapter III.D.7.07 Control Strategies for purposes of the solid-fuel home heating device emissions source category.

7. Volume II, Chapter III.D.7.08 Precursor Demonstration, for the purposes of NO_X and VOC emissions as it relates to BACM/BACT control measure requirements.

8. Volume II, Chapter III.D.7.11 Contingency Measures.

9. Volume II, Chapter III.D.7.12 Emergency Episode Plan.

EPA is proposing to approve and incorporate by reference submitted regulatory changes into the Alaska SIP. Upon final approval, the Alaska SIP will include:

10. 18 AAC 50.075, except (d)(2), State effective January 8, 2020, (solid fuel-fired heating devices may not exceed 20 percent opacity for more than six minutes in any one hour when an air quality advisory is in effect).

B. Proposed Disapproval

EPA is also proposing to disapprove the following revisions to the Alaska SIP as not meeting requirements for Serious areas and Serious $PM_{2.5}$ areas that fail to attain:

1. Attainment projected emissions inventory meeting the requirements of

[199] On April 1, 1996, the U.S. Department of Transportation published a document in the **Federal Register** describing the criteria to be used to determine which highway projects can be funded or approved during the time that the highway sanction is imposed in an area. (*See* 61 FR 14363).

[200] CAA section 110(c), 42 U.S.C. 7410(c).

[201] Control strategy SIP revisions as defined in the transportation conformity include reasonable further progress plans and attainment demonstrations (40 CFR 93.101).

[202] 40 CFR 93.120(a)(2).

[203] 42 U.S.C. 7513a(d).

[204] 42 U.S.C. 7502(c)(3).

[205] 42 U.S.C. 7513a(e).

[206] 42 U.S.C. 7513a(b)(1)(B)

CAA section 172(c)(1) [207] and 40 CFR 51.1008(c)(2).

2. Partial disapproval of the control strategy BACM requirements (CAA section 189(b)(1)(B) [208] and 40 CFR 51.1010(a)) for the following emission source categories:

a. Residential and commercial fuel oil-fired devices
b. Requirements for wood sellers
c. Coal-fired heating devices
d. Small commercial area sources, including coffee roasters, charbroilers, and used oil burners
e. Weatherization and energy efficiency measures
f. Mobile source emissions

3. Disapproval of the control strategy BACT requirements (CAA section 189(b)(1)(B) [209] and 40 CFR 51.1010(a)) for the following emission sources:

a. Chena Power Plant
  i. Coal-fired boilers ($PM_{2.5}$; NH_3; SO_2)
b. Fort Wainwright
  i. Coal-fired boilers ($PM_{2.5}$; NH_3; SO_2)
  ii. Diesel-fired boilers ($PM_{2.5}$; NH_3; SO_2)
  iii. Large diesel-fired engines ($PM_{2.5}$; NH_3; SO_2)
  iv. Small emergency engines ($PM_{2.5}$; NH_3; SO_2)
  v. Materials handling ($PM_{2.5}$; NH_3)
c. University of Alaska Fairbanks
  i. Dual fuel-fired boiler ($PM_{2.5}$; NH_3; SO_2)
  ii. Mid-sized diesel-fired boilers ($PM_{2.5}$; NH_3; SO_2)
  iii. Small-sized diesel-fired boilers ($PM_{2.5}$; NH_3; SO_2)
  iv. Large diesel-fired engine ($PM_{2.5}$; NH_3; SO_2)
  v. Small diesel-fired engines ($PM_{2.5}$; NH_3; SO_2)
  vi. Pathogenic waste incinerator ($PM_{2.5}$; NH_3; SO_2)
  vii. Material handling ($PM_{2.5}$; NH_3)
d. Zehnder
  i. Oil-fired simple cycle gas turbines ($PM_{2.5}$; NH_3; SO_2)
  ii. Diesel-fired emergency generators ($PM_{2.5}$; NH_3; SO_2)
  iii. Diesel-fired boilers ($PM_{2.5}$; NH_3; SO_2)
e. North Pole Power Plant
  i. Oil-fired simple cycle gas turbines ($PM_{2.5}$; NH_3; SO_2)
  ii. Oil-fired combined cycle gas turbines ($PM_{2.5}$; NH_3; SO_2)
  iii. Large diesel-fired engine ($PM_{2.5}$; NH_3; SO_2)
  iv. Propane-fired boiler ($PM_{2.5}$; NH_3; SO_2)

4. Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and Most Stringent Measures (MSM) [210] (if applicable)) under 40 CFR 51.1010(c).

5. Attainment demonstration and modeling meeting the requirements of CAA sections 40 CFR 51.1003(c) and 51.1011.

6. Reasonable further progress (RFP) provisions meeting the requirements of CAA section 172(c)(2) [211] and 40 CFR 51.1012.

7. Motor vehicle emission budgets meeting the requirements under 40 CFR 93.118.

8. Quantitative milestones meeting the requirements of CAA section 189(c) [212] and 40 CFR 51.1013.

9. Contingency measures meeting the requirements of CAA section 172(c)(9) [213] and 40 CFR 51.1014 applicable to Serious areas subject to CAA section 189(b) and 189(d).

EPA is soliciting public comments on these proposed actions.

VI. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the regulations described in section V.A. of this document. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for more information).

VII. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP approval in part and disapproval in part, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that EPA is proposing to partially disapprove would not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

[207] 42 U.S.C. 7502(c)(3).
[208] 42 U.S.C. 7513a(b)(1)(B).
[209] *Id.*
[210] MSM is applicable if EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks Serious Nonattainment Area.
[211] 42 U.S.C. 7502(c)(2).
[212] 42 U.S.C. 7513a(c).
[213] 42 U.S.C. 7502(c)(9).

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA's evaluation of this issue is contained in the section of the preamble titled ''Environmental Justice Considerations.''

List of Subjects in 40 CFR Part 52

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

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

Dated: December 30, 2022.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2022–28666 Filed 1–9–23; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

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To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes. (Jan. 5, 2023; 136 Stat. 6182)

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Colorado River Indian Tribes Water Resiliency Act of 2022 (Jan. 5, 2023; 136 Stat. 6186)

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To authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation. (Jan. 5, 2023; 136 Stat. 6198)

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S. 5087/P.L. 117–359
To amend the Not Invisible Act of 2019 to extend, and provide additional support for, the activities of the Department of the Interior and the Department of Justice Joint Commission on Reducing Violent Crime Against Indians, and for other purposes. (Jan. 5, 2023; 136 Stat. 6290)

S. 5168/P.L. 117–360
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S. 5328/P.L. 117–361
To amend the Farm Security and Rural Investment Act of 2002 to extend terminal lakes assistance. (Jan. 5, 2023; 136 Stat. 6294)

S. 5329/P.L. 117–362
To amend the Bill Emerson Good Samaritan Food Donation Act to improve the program, and for other purposes. (Jan. 5, 2023; 136 Stat. 6295)

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