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

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2022–0083]

Qualification of Connection Assemblies for Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 of Regulatory Guide (RG) 1.156, ''Qualification of Connection Assemblies for Production and Utilization Facilities.'' This revised guide was updated to endorse ''Institute of Electrical and Electronics Engineers'' Std. 572–2019 to provide the latest technical information on approaches to satisfy the qualification requirements for connection assemblies. This includes guidance that when used in conjunction with the guidance in RG 1.89, ''Environmental Qualification of Certain Electric Equipment Important to Safety for Nuclear Power Plants,'' provides an acceptable method of demonstrating compliance with the NRC regulations pertaining to the environmental qualification of connectors, terminations, and environmental seals in combination with cables or wires as assemblies for service in production and utilization facilities to ensure that the connection assemblies can perform their safety functions. Further, the revised guide modifies the title of the RG to include other nuclear facilities, as discussed in the RG Section A, under Applicability.

DATES: Revision 2 of RG 1.156 is available on February 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0083 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–2022–0083. 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 individuals 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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 2 of RG 1.156 and the regulatory analysis may be found in ADAMS under Accession No. ML22255A125 and ML21288A561, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Ahsan Sallman, Office of Nuclear Reactor Regulation, telephone: 301–415–2380, email: *Ahsan.Sallman@nrc.gov,* and James Steckel, Office of Nuclear Regulatory Research, telephone: 301–415–1026, email: *James.Steckel@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 2 of RG 1.156 was issued with a temporary identification number of DG–1400 (ADAMS Accession No. ML21288A562).

Revision 2 of RG 1.156 describes basic procedures for qualifying connection assemblies (*e.g.,* connectors, terminations, and environmental seals in combination with related cables or wires as assemblies). The qualification requirements in this standard, when used in conjunction with RG 1.89 (ADAMS Accession No. ML003740271) allow an applicant or licensee to demonstrate and document the ability of the equipment to perform safety functions under applicable service conditions, including design-basis events. Additionally, Revision 2 of RG 1.156 modifies the title of the RG to include other nuclear facilities, as discuss in the RG Section A, under Applicability.

II. Additional Information

In January 2017 the staff conducted a periodic review of Revision 1 to RG 1.156, and on January 17, 2017, the staff reported the results of the periodic review, ''Results of Periodic Review of Regulatory Guide 1.156,'' (ADAMS Package Accession No. ML16350A346). Based on the results of the periodic review, the staff concluded that there were no technical issues for staff to address related to the periodic review of RG 1.156, Revision 1, and no changes to RG 1.156, Revision 1, were warranted.

The NRC published a notice of availability of DG–1400 in the **Federal Register** on April 11, 2022 (87 FR 21221) for a 30-day public comment period. The public comment period ended May 11, 2022. Public comments and staff responses to those comments are available in ADAMS under Accession No. ML22224A053.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this

document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

The issuance of this regulatory guide does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants,'' because, as explained in this regulatory guide, licensees are not required to comply with the positions set forth in this regulatory guide.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 7, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–02958 Filed 2–10–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0109]

RIN 3150–AK86

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to renew, for 40 years, the initial certificate and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014. The renewal of the initial certificate and Amendment Nos. 1 through 15 revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

DATES: This direct final rule is effective May 1, 2023, unless significant adverse comments are received by March 15, 2023. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0109, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

FOR FURTHER INFORMATION CONTACT: Kristina Banovac, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov* and James Firth, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6628, email: *James.Firth@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0109 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0109. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2022–0109 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

II. Rulemaking Procedure

This rule involves the renewal of Certificate of Compliance No. 1014, which includes the initial certificate and Amendment Nos. 1 through 15. As described in the Statement of Considerations to the final rule ''License and Certificate of Compliance Terms'' (76 FR 8872; February 16, 2011), a renewal reaffirms the original design basis, perhaps with some modifications, but does not involve reevaluating the original design basis in accordance with current review standards, which may be different from the standards in place when the cask design was initially certified. The NRC is using the ''direct final rule procedure'' to issue this renewal because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on May 1, 2023. However, if the NRC receives any significant adverse comment on this direct final rule by March 15, 2023, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs and for the renewal of the cask design approval. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241) that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014. On August 28, 2007 (72 FR 49561), the NRC amended the scope of the general licenses issued under 10 CFR 72.210 to include the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 52. On February 16, 2011 (76 FR 8872), the NRC amended subparts K and L in 10 CFR part 72, to extend and clarify the term limits for certificates of compliance and revised the conditions for spent fuel storage casks renewals, including adding requirements for the safety analysis report to include time-limited aging analyses and a description of aging management programs. The NRC also clarified the terminology used in the regulations to use ''renewal'' rather than ''reapproval'' to better reflect that extending the term of a currently approved cask design is based on the cask design standards in effect at the time the certificate of compliance was approved rather than current standards.

IV. Discussion of Changes

The term certified by the initial Certificate of Compliance No. 1014 was 20 years. The period of extended operation for each cask begins 20 years after the cask is first used by the general licensee to store spent fuel. On January 31, 2020, as supplemented on October

16, 2020, October 29, 2020, April 19, 2021, and April 23, 2021, Holtec International submitted a request to renew Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System design for an additional 40 years beyond the initial certificate term (ADAMS Accession Nos. ML20049A081, ML20290A819, ML20303A254, ML21109A367, and ML21113A201).

The HI–STORM 100 Cask System design consists of (1) interchangeable multi-purpose canisters (MPCs), which contain the fuel, (2) a storage overpack (HI–STORM), which contains the MPC during storage, and (3) a transfer cask (HI–TRAC), which contains the MPC during loading, unloading, and transfer operations. The MPC is a welded, cylindrical canister with a fuel basket, a baseplate, a lid, a closure ring, and the canister shell. This cask system design has twelve types of MPCs.

The HI–STORM 100 dry storage system includes an aboveground system and an underground system. For the aboveground systems, the HI–STORM 100 or HI–STORM 100S storage overpack provides shielding and structural protection of the MPC during storage. The HI–STORM 100S is a variation of the HI–STORM 100 overpack design that includes a modified lid that incorporates the air outlet ducts, allowing the overpack body to be shortened. The HI–STORM 100A and HI–STORM 100SA are variants of the HI–STORM 100 overpack and are outfitted with an extended baseplate and gussets to enable the overpack to be anchored to the concrete storage pad in high seismic applications. The HI–STORM 100U system is an underground storage system within the HI–STORM 100 Cask System. The HI–STORM 100U storage vertical ventilated module uses an air-cooled vault or caisson storage design.

The Nuclear Energy Institute's (NEI) document NEI 14–03, Revision 2, ''Format, Content and Implementation Guidance for Dry Cask Storage Operations-Based Aging Management,'' (2016) (ADAMS Accession No. ML16356A210) provides an operations-based, learning approach to aging management for the storage of spent fuel, which builds on the lessons learned from industry's experience with aging management for reactors. The NRC endorsed NEI 14–03, Revision 2, with clarifications, in Regulatory Guide 3.76, Revision 0, ''Implementation of Aging Management Requirements for Spent Fuel Storage Renewals,'' issued July 2021 (ADAMS Accession No. ML21098A022). Specifically, NEI 14–03 provides a framework for sharing operating experience through an industry-developed database called the ISFSI Aging Management Institute of Nuclear Power Operations Database. NEI 14–03 also includes a framework for learning aging management programs using aging management ''tollgates,'' which offer a structured approach for periodically assessing operating experience and data from applicable research and industry initiatives at specific times during the period of extended operation and performing a safety assessment that confirms the safe storage of the spent nuclear fuel by ensuring the aging management programs continue to effectively manage the identified aging effects. The ISFSI Aging Management Institute of Nuclear Power Operations Database provides operating experience information and a basis to support licensees' future changes to the aging management programs. The ISFSI Aging Management Institute of Nuclear Power Operations Database and the aging management tollgates are considered key elements in ensuring the effectiveness of aging management activities and the continued safe storage of spent fuel during the period of extended operation.

Holtec International incorporated periodic tollgate assessments as requirements in the renewed certificate of compliance, as recommended in NEI 14–03, Revision 2. The implementation of tollgate assessments provides reasonable assurance that the aging management programs for the MPC, overpack, transfer cask, high burnup fuel assembly components (if applicable), and the 100U concrete (if applicable) will continue to effectively manage aging effects during the period of extended operation.

The renewal of the initial certificate and Amendment Nos. 1 through 15 was conducted in accordance with the renewal provisions in § 72.240. The NRC's regulations require the safety analysis report for the renewal to include time-limited aging analyses that demonstrate that structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management programs for the management of issues associated with aging that could adversely affect structures, systems, and components important to safety. This section of the NRC spent fuel storage regulations authorizes the NRC to revise the certificate of compliance to include any additional terms, conditions, and specifications it deems necessary to ensure the safe operation of the cask during the certificate of compliance's renewal term. Here, the NRC is adding three new conditions to the renewal of the certificate of compliance, which will ensure the safe operation of the cask during the certificate of compliance's renewal term and will allow the use of the HI–STORM 100 during the approved period of extended operation. The NRC is amending the condition that describes the authorization for use of the Holtec International HI–STORM 100 Cask System design under the general license.

The three new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 15 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal. The updated final safety analysis report must reflect the changes resulting from the review and approval of the renewal of the certificate of compliance, including the HI–STORM 100 final safety analysis report supplement, as documented in Appendix D of the HI–STORM 100 certificate of compliance renewal application, Revision 1, dated April 23, 2021 (ADAMS Accession No. ML21113A203). This condition ensures that final safety analysis report changes are made in a timely fashion to enable general licensees using the storage system during the period of extended operation to develop and implement necessary procedures related to renewal and aging management activities. The certificate of compliance holder is required to continue to update the final safety analysis report pursuant to the requirements of § 72.248.
- A condition requiring each general licensee using the HI–STORM 100 Cask System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (*i.e.,* changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8) is made. This condition also makes it clear that to meet the requirements in § 72.212(b)(11), general licensees that

currently use a HI–STORM 100 Cask System will need to update their § 72.212 reports, even if they do not put additional Holtec International HI–STORM 100 Cask Systems into service after the renewal's effective date. These evaluations, reviews, and determinations are to be completed before the dry storage system enters the period of extended operation (which begins 20 years after the first use of the Holtec International HI–STORM 100 Cask System) or no later than 365 days after the effective date of this rule, whichever is later. This will provide general licensees a minimum of 365 days to comply with the new terms, conditions, specifications, and other changes to the certificate of compliance and to make the necessary determinations required by § 72.212(b)(8) as to whether activities related to the storage of spent nuclear fuel using the renewed certificate of compliance involve a change in the facility Technical Specifications or requires a license amendment for the facility.

• A condition requiring all future amendments and revisions to the certificate of compliance (*i.e.,* the initial certificate 1014 and Amendment Nos. 1 through 15) include evaluations of the impacts to aging management activities (*i.e.,* time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal. This condition ensures that future amendments to the certificate of compliance address the renewed design bases for the certificate of compliance, including aging management impacts that may arise from the changes to the system in proposed future amendments.

Additionally, the condition for the initial certificate and Amendment Nos. 1 through 15 would be amended to reflect changes to the scope of the general license granted by § 72.210 that were made after the approval of the initial certificate. The authorization is amended to allow persons authorized to possess or operate a nuclear power reactor under 10 CFR part 52 to use the HI–STORM 100 Cask Design under the general license issued under § 72.210.

The NRC made one corresponding change from the technical specifications for the initial certificate of compliance and Amendment Nos. 1 through 15 by adding a section addressing the aging management program. General licensees using the HI–STORM Cask System design during the period of extended operation will need to establish, implement, and maintain written procedures for each applicable aging management program in the final safety analysis report to use the HI–STORM 100 Cask System design during the approved period of extended operation. The procedures will need to include provisions for changing aging management program elements, as necessary, and within the limitations of the approved design bases to address new information on aging effects based on inspection findings and/or industry operating experience. General licensees will also be required to perform tollgate assessments as described in Chapter 9 of the final safety analysis report.

General licensees will need to establish and implement these written procedures prior to entering the period of extended operation (which begins 20 years after the first use of the cask system) or no later than 365 days after the effective date of this rule, whichever is later. The general licensee is required to maintain these written procedures for as long as the general licensee continues to operate HI–STORM 100 Cask Systems in service for longer than 20 years.

Under § 72.240(d), the design of a spent fuel storage cask will be renewed if (1) the quality assurance requirements in 10 CFR part 72, subpart G, ''Quality Assurance,'' are met, (2) the requirements of 10 CFR 72.236(a) through (i) are met, and (3) the application includes a demonstration that the storage of spent fuel has not, in a significant manner, adversely affected the structures, systems, and components important to safety. Additionally, § 72.240(c) requires that the safety analysis report accompanying the application contain time-limited aging analyses that demonstrate that the structures, systems, and components important to safety will continue to perform their intended function for the requested period of extended operation and a description of the aging management program for management of aging issues that could adversely affect structures, systems, and components important to safety.

As documented in the preliminary safety evaluation report, the NRC reviewed the application for the renewal of the certificate of compliance and the conditions in the certificate of compliance and determined that the conditions in subpart G, § 72.236(a) through (i), and § 72.238 have been met and the application includes a demonstration that the storage of spent nuclear fuel has not, in a significant manner, adversely affected structures, systems, and components important to safety. The NRC's safety review determined that the HI–STORM 100, with the added terms, conditions, and specifications in the certificate of compliance and the technical specifications, will continue to meet the requirements of 10 CFR part 72 for an additional 40 years beyond the initial certificate term. Consistent with § 72.240, the NRC is renewing the Holtec International HI–STORM 100 initial certificate 1014 and Amendment Nos. 1 through 15.

Extending the expiration date of the approval for the initial certificate and Amendment Nos. 1 through 15 for 40 years and requiring the implementation of aging management activities during the period of extended operation does not impose any modification or addition to the design of a cask system's structures, systems, and components important to safety, or to the procedures or organization required to operate the system during the initial 20-year storage term certified by the cask's initial certificate of compliance. General licensees who have loaded these casks, or who load these casks in the future under the specifications of the applicable renewed certificate of compliance, may store spent fuel in these cask system designs for 20 years without implementing the aging management program. For any casks that have been in use for more than 20 years, the general licensee will have 365 days to complete the analyses required to use the cask system design pursuant to the terms and conditions in the renewed certificate of compliance. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872), the general licensee's authority to use a particular storage cask design under an approved certificate of compliance will be for at least the term certified by the cask's certificate of compliance. For casks placed into service before the expiration date of the initial certificate, the general licensee's authority to use the cask would be extended for an additional 40 years from the date the initial certificate expired. For casks placed into service after the expiration date of the initial certificate and before the effective date of this rule, the general licensee's authority to use the cask would last the length of the term certified by the cask's certificate of compliance (*i.e.,* 40 years after the cask is placed into service). For casks placed into service after this rule becomes effective, the general licensee's authority to use the cask would expire 40 years after the cask is first placed into service.

This direct final rule revises the HI–STORM 100 Cask System design listing in § 72.214 by renewing, for 40 more years, the initial certificate and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014. The

renewed certificate of compliance includes the changes to the certificate of compliance and technical specifications previously described. The renewed certificate of compliance includes the terms, conditions, and specifications that will ensure the safe operation of the cask during the renewal term and the added conditions that will require the implementation of an aging management program. The preliminary safety evaluation report describes the new and revised conditions in the certificate of compliance, the changes to the technical specifications, and the NRC staff evaluation.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the Holtec International HI–STORM 100 Cask System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Final Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact based on this environmental assessment.

A. The Action

The proposed action is to amend § 72.214 to revise the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014.

B. The Need for the Action

This direct final rule renews the certificate of compliance for the Holtec International HI–STORM 100 Cask System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under the general license provisions in 10 CFR part 72. Specifically, this rule extends the expiration date for the Holtec International HI–STORM 100 Cask System certificate of compliance for an additional 40 years, allowing a power reactor licensee to continue using the cask design during a period of extended operation for a term certified by the cask's renewed certificate of compliance.

This direct final rule would add conditions to the certificate of compliance and technical specifications necessary to have confidence that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation and that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of an accident during the period of extended operation. These conditions are needed to provide reasonable assurance that adequate protection of public health and safety will continue during the period of extended operation.

The three new conditions added to the renewal of the initial certificate of compliance and Amendment Nos. 1 through 15 are:

- A condition requiring the certificate of compliance holder to submit an updated final safety analysis report within 90 days after the effective date of the renewal and to make continued updates to the final safety analysis report pursuant to the requirements of § 72.248.
- A condition requiring each general licensee using the HI–STORM 100 Cask System design to include, in the evaluations required by § 72.212(b)(5), evaluations related to the terms, conditions, and specifications of this certificate of compliance amendment as modified (*i.e.,* changed or added) as a result of the renewal of the certificate of compliance and include, in the document review required by § 72.212(b)(6), a review of the final safety analysis report changes resulting from the renewal of the certificate of compliance and the NRC Safety Evaluation Report for the renewal of the certificate of compliance. The general licensee would also be required to ensure that the evaluations required by § 72.212(b)(7) in response to these changes are conducted and the determination required by § 72.212(b)(8) is made.
- A condition requiring all future amendments and revisions to the certificate of compliance to include evaluations of the impacts to aging management activities (*i.e.,* time-limited aging analyses and aging management programs) to ensure they remain adequate for any changes to structures, systems, and components important to safety within the scope of renewal.

The authority statement for the initial certificate and Amendments Nos. 1 through 15 would be revised to be consistent with the scope of the general license issued by § 72.210.

This renewal requires general licensees to conduct evaluations to implement aging management programs to manage issues associated with aging that could adversely affect structures, systems, and components important to safety to continue using the Holtec International HI–STORM 100 Cask System design during the period of extended operation for a term certified by the cask's renewed certificate of compliance.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impacts of using NRC-approved storage casks were analyzed in the environmental assessment for the 1990 final rule and are described in ''Environmental Assessment for Proposed Rule Entitled, 'Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear

Power Reactor Sites.' '' The potential environmental impacts related to the underground configuration for the Holtec HI–STORM 100U system were analyzed in the 2009 environmental assessment, ''Environmental Assessment for the Holtec International HI–STORM 100U Underground Cask System.'' The potential environmental impacts for the longer-term use of dry cask designs and the renewal of certificates of compliance were analyzed in the environmental assessment for the 2011 final rule establishing the regulatory requirements for renewing certificates of compliance and are described in ''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms'' (ML100710441). The environmental impacts from continued storage were also considered in NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.'' The environmental assessment for this renewal of the initial certificate and Amendment Nos. 1 through 15 tiers off of the environmental assessment for the February 16, 2011, final rule and NUREG–2157. Tiering from past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The Holtec International HI–STORM 100 Cask System design is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

A renewal reaffirms the original design basis, perhaps with some modifications. The renewal allows the cask to be used during a period of extended operation that corresponds to the term certified by the cask's certificate of compliance in the renewal. As a condition of the renewal, the NRC requires an aging management program that will ensure that structures, systems, and components important to safety will perform as designers intended during the renewal period. The renewal does not reflect a change in design or fabrication of the cask system. Because the aging management program will ensure the structures, systems, and components important to safety for the cask will perform as designed for the renewal period, any resulting occupational exposure or offsite dose rates from the renewal of the initial certificate and Amendment Nos. 1 through 15 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask system would continue to maintain confinement, shielding, and criticality control in the event of an accident. The NRC determined that the structures, systems, and components important to safety will continue to perform their intended functions during the requested period of extended operation. The NRC determined that the renewed Holtec International HI–STORM 100 Cask System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny renewing the Holtec International HI–STORM 100 Cask System design and to not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the Holtec International HI–STORM 100 Cask System design after the expiration date of the certificate of compliance or that seeks to continue storing spent nuclear fuel in the Holtec International HI–STORM 100 Cask System design for longer than the term certified by the cask's certificate of compliance for the initial certificate (*i.e.,* more than 20 years) would have to request an exemption from the requirements of §§ 72.212 and 72.214 or would have to load the spent nuclear fuel into a different approved cask design. Under this alternative, those licensees interested in continuing to use the HI–STORM 100 Cask System design would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. If the general licensee is granted an exemption, the environmental impacts would be the same as the proposed action. If the general licensee is not granted an exemption, the general licensee would need to unload the Holtec International HI–STORM 100 cask system and load the fuel into another cask system design, which would result in environmental impacts that are greater than for the proposed action because activities associated with cask loading and decontamination may result in some small liquid and gaseous effluent.

E. Alternative Use of Resources

Renewal of the initial certificate and Amendment Nos. 1 through 15 to Certificate of Compliance No. 1014 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Final Finding of No Significant Impact

The proposed action is to amend § 72.214 to revise the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014. The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' and are described in the preceding environmental assessment in Section VIII of this notice.

The renewal does not reflect a change in design or fabrication of the cask system as approved for the initial certificate or Amendment Nos. 1 through 15. The NRC determined that the renewed Holtec International HI–STORM 100 Cask System design, when used under the conditions specified in the renewed certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured.

Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No.

1014, Renewal of the initial certificate and Amendment Nos. 1 through 15,'' will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule and the Commission has determined not to prepare an environmental impact statement for the proposed action.

The final finding of no significant impact and the other related environmental documents, including NUREG–2157, the ''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR part 72 License and Certificate of Compliance Terms'' (2010), and the ''Environmental Assessment for the Holtec International HI–STORM 100U Underground Cask System'' (2009) are available for public inspection through the NRC public website using ADAMS as described in Section I, ''Obtaining Information and Submitting Comments.''

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. Holtec International is a diversified energy technology company that engages in manufacturing, has more than 500 employees, and does not qualify as a small entity based on the Regulatory Flexibility Act or the NRC size standards at 10 CFR 2.810. Similarly, none of the existing nuclear power plants storing spent nuclear fuel qualify as small entities under the Regulatory Flexibility Act or NRC size standards. Therefore, neither the current licensees affected by this rule, nor Holtec International, fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC. Thus, pursuant to its delegated authority, the Executive Director for Operations certifies under section 605 of the Regulatory Flexibility Act ''that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs under a general license to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec International HI–STORM 100 Cask System design by adding it to the list of NRC-approved cask designs in § 72.214.

On January 31, 2020, as supplemented on October 16, 2020, October 29, 2020, April 19, 2021, and April 23, 2021, Holtec International submitted a request to renew Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System design for an additional 40 years beyond the initial certificate term (ADAMS Accession Nos. ML20049A081, ML20290A819, ML20303A254, ML21109A367, and ML21113A201) as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of the renewal of the initial certificate and Amendments Nos. 1 through 15 and to require any 10 CFR part 72 general licensee seeking to continue the storage of spent nuclear fuel in the Holtec International HI–STORM 100 Cask System design using the initial certificate (Amendment No. 0) or Amendments No. 1 through 15 beyond the initial 20-year storage term certified by the cask's initial certificate of compliance to request an exemption from the requirements of §§ 72.212 and 72.214. The term for general licenses would not be extended from 20 years to 40 years. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the actions in this direct final rule do not require a backfit analysis because they do not fall within the definition of backfitting under § 72.62 or § 50.109(a)(1), they do not impact the issue finality provisions applicable to combined licenses under 10 CFR part 52, and they do not impact general licensees that are using these systems for the duration of their current general licenses.

Certificate of Compliance No. 1014 for the Holtec International HI–STORM 100 Cask System design, as currently listed in § 72.214, ''List of Approved Spent Fuel Storage Casks,'' was initially approved for a 20-year term. This direct final rule would renew the initial certificate and Amendment Nos. 1 through 15, extending their approval period by 40 years. The term certified by the cask's certificate of compliance for a renewed certificate of compliance is the period of time commencing with the most recent certificate of compliance renewal date and ending with the certificate of compliance expiration date. With this renewal, the term certified by the cask's certificate of compliance would change from 20 years to 40 years, with the period of extended operation beginning 20 years after the cask is placed into service. The revision to the certificate of compliance through the renewal consists of the changes in the renewed initial certificate (Amendment No. 0) and renewed Amendment Nos. 1 through 15 as previously described, and as set forth in the renewed certificates of compliance and technical specifications. These changes would not affect the use of the Holtec International HI–STORM 100 Cask System design for the initial 20-

year term for previously loaded casks. The renewed certificates would require implementation of aging management programs during the period of extended operation, which begins after the storage cask system's initial 20-year service period.

Because the term for the renewal would be longer than the initial term certified by the cask's certificate of compliance, the general licensee's authority to use the cask would be extended and would be no less than 40 years. This change would not add, eliminate, or modify (1) structures, systems, or components of an independent spent fuel storage installation or a monitored retrievable storage installation or (2) the procedures or organization required to operate an independent spent fuel storage installation or a monitored retrievable storage installation.

Renewing these certificates does not fall within the definition of backfit under § 72.62 or § 50.109, or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. General licensees who have loaded these casks, or who load these casks in the future under the specifications of the applicable certificate, may continue to store spent fuel in these systems for the initial 20-year storage period authorized by the original certificate. Extending the certificates' expiration dates for 40 more years and requiring the implementation of aging management programs does not impose any modification or addition to the design of the structures, systems, and components important to safety of a cask system, or to the procedures or organization required to operate the system during this initial 20-year term certified by the cask's certificate of compliance. The aging management programs required to be implemented by this renewal are only required to be implemented after the storage cask system's initial 20-year service period ends.

Because this rulemaking renews the certificates, and because renewal is a separate NRC licensing action voluntarily implemented by vendors or licensees, the renewal of these certificates is not an imposition of new or changed requirements from which these certificate of compliance holders or licensees would otherwise be protected by the backfitting provisions in § 72.62 or § 50.109. Even if renewal of this certificate of compliance cask system design could be considered a backfit, Holtec International, as the certificate of compliance holder and vendor of the casks, is not protected by the backfitting provisions in § 72.62 in this capacity.

Holtec International is also a general licensee using the HI–STORM 100 Cask System design under a general license. General licensees, including Holtec International, using the existing systems subject to these renewals would be protected by the backfitting provisions in § 72.62 and § 50.109 if the renewals constituted new or changed requirements. But as previously explained, renewal of the certificates for these systems does not impose such requirements. The general licensees using these certificates of compliance may continue storing material in the Holtec International HI–STORM 100 Cask System design for the initial 20-year storage period identified in the applicable certificate or amendment with no changes. If general licensees choose to continue to store spent fuel in the Holtec International HI–STORM 100 Cask System design after the initial 20-year period, these general licensees will be required to implement the applicable aging management programs for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

Additionally, the actions in this direct final rule do not impact issue finality provisions applicable to combined licenses under 10 CFR part 52. Currently, there are no Holtec International HI–STORM 100 casks used at an independent fuel storage installation associated with a nuclear power reactor licensed pursuant to 10 CFR part 52 under the general license granted by § 72.210.

For these reasons, renewing the initial certificate and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Certificates of Compliance and Proposed Technical Specifications	
Proposed Renewed Certificate of Compliance No. 1014 (Amendment No. 0)	ML22098A235.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 0.	ML22098A236.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 0.	ML22098A237.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 1	ML22098A238.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 1.	ML22098A239.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 1.	ML22098A240.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 2	ML22098A241.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 2.	ML22098A242.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 2.	ML22098A243.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 3	ML22098A244.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 3.	ML22098A245.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 3.	ML22098A246.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 4	ML22098A247.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 4.	ML22098A248.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 4.	ML22098A249.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 5	ML22098A250.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 5.	ML22098A251.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 5.	ML22098A252.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 6	ML22098A253.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 6.	ML22098A254.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 6.	ML22098A255.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 7	ML22098A256.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A257.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A258.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A259.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A260.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 8, Revision 1	ML22098A261.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A262.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A263.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A264.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A265.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 9, Revision 1	ML22098A266.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A267.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A268.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A269.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A270.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 10	ML22098A271.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A272.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A273.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A274.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A275.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 11	ML22098A276.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A277.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A278.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A279.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A280.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 12	ML22098A281.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A282.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A283.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A284.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A285.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 13	ML22098A286.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A287.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A288.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A289.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A290.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 14	ML22098A291.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A292.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A293.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A294.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A295.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 15	ML22098A296.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A297.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A298.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A299.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A300.
Proposed Renewed Certificate of Compliance No. 1014 Appendix C: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A301.
Proposed Renewed Certificate of Compliance No. 1014 Appendix D: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A302.
Preliminary Safety Evaluation Report	
Preliminary Safety Evaluation Report for the HI–STORM 100 Cask System: Certificate of Compliance No. 1014 Renewal Docket No. 72–1014.	ML22098A303.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.'' (1989).	ML051230231.
''Environmental Assessment for the Holtec International HI–STORM 100U Underground Cask System'' (2009)	ML091060766.
''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms'' (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' Final Rule (July 18, 1990)	55 FR 29181.
''List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 7'' (October 13, 2009)	74 FR 52387.
''License and Certificate of Compliance Terms'' (February 16, 2011)	76 FR 8876.
Holtec International, HI–STORM 100 Renewal Application Documents	
''Holtec International HI–STORM 100 Storage Certificate of Compliance Renewal Application.'' Holtec Letter 5014890.	ML20049A081 (package).
''Holtec International, Submittal of RAI Responses on HI–STORM 100 License Renewal.'' Holtec Letter 5014911	ML20290A819 (package).
''Holtec International, Submittal of RAI Responses on HI–STORM 100 License Renewal [submittal of report HI–2002396, Revision 5].'' Holtec Letter 5014912.	ML20303A254 (package).
''Holtec International, Submittal of RAI Clarification Responses on HI–STORM 100 License Renewal.'' Holtec Letter 5014922.	ML21109A367 (package).
''Holtec International, Submittal of RAI Clarification Responses on HI–STORM 100 License Renewal—Updated Attachment.'' Holtec Letter 5014923.	ML21113A201 (package).
Certificate of Compliance Renewal Application for the HI–STORM 100 Dry Storage System: Certificate of Compliance No. 1014, Docket Number 72–1014.	ML21113A203.
Holtec International, HI–STORM 100 Final Safety Analysis Reports	
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI–2002444, Revision 18. (non-proprietary) (May 2019).	ML19150A405.
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI–2002444, Revision 19. (non-proprietary) (April 2020).	ML20121A317.
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI–2002444, Revision 20. (non-proprietary) (June 2020).	ML20167A018.
Other Documents	
''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel.'' NUREG–1927, Revision 1. Washington, DC. June 2016.	ML16179A148.
''Managing Aging Processes in Storage (MAPS) Report.'' Final Report. NUREG–2214. Washington, DC. July 2019	ML19214A111.

Document	ADAMS accession No./ **Federal Register** citation
"General License for Storage of Spent Fuel at Power Reactor Sites" (July 18, 1990)	55 FR 29181.
"List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition" (May 1, 2000)	65 FR 25241.
"License and Certificate of Compliance Terms" (February 16, 2011)	76 FR 8872.
"Agreement State Program Policy Statement; Correction" (October 18, 2017)	82 FR 48535.
Nuclear Energy Institute NEI 14–03, Revision 2, "Format, Content and Implementation Guidance for Dry Cask Storage Operations-Based Aging Management," (2016).	ML16356A210.
Regulatory Guide 3.76, Revision 0, "Implementation of Aging Management Requirements for Spent Fuel Storage Renewals." July 2021.	ML21098A022.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0109.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1014 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000, superseded by Renewed Initial Certificate Effective Date: May 1, 2023.

Amendment Number 1 Effective Date: July 15, 2002, superseded by Renewed Amendment Number 1 Effective Date: May 1, 2023.

Amendment Number 2 Effective Date: June 7, 2005, superseded by Renewed Amendment Number 2 Effective Date: May 1, 2023.

Amendment Number 3 Effective Date: May 29, 2007, superseded by Renewed Amendment Number 3 Effective Date: May 1, 2023.

Amendment Number 4 Effective Date: January 8, 2008, superseded by Renewed Amendment Number 4 Effective Date: May 1, 2023.

Amendment Number 5 Effective Date: July 14, 2008, superseded by Renewed Amendment Number 5 Effective Date: May 1, 2023.

Amendment Number 6 Effective Date: August 17, 2009, superseded by Renewed Amendment Number 6 Effective Date: May 1, 2023.

Amendment Number 7 Effective Date: December 28, 2009, superseded by Renewed Amendment Number 7 Effective Date: May 1, 2023.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment Number 8, Revision 1, Effective Date: February 16, 2016; superseded by Renewed Amendment Number 8, Revision 1 Effective Date: May 1, 2023.

Amendment Number 9 Effective Date: March 11, 2014; superseded by Amendment Number 9, Revision 1, Effective Date: March 21, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A451); superseded by Renewed Amendment Number 9, Revision 1 Effective Date: May 1, 2023.

Amendment Number 10 Effective Date: May 31, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A452); superseded by Renewed Amendment Number 10 Effective Date: May 1, 2023.

Amendment Number 11 Effective Date: February 25, 2019, as corrected (ADAMS Accession No. ML19343B024); superseded by Renewed Amendment Number 11 Effective Date: May 1, 2023.

Amendment Number 12 Effective Date: February 25, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A111); further corrected December 23, 2019 (ADAMS Accession No. ML19343A908); superseded by Renewed Amendment Number 12 Effective Date: May 1, 2023.

Amendment Number 13 Effective Date: May 13, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A122); further corrected December 23, 2019 (ADAMS Accession No. ML19343B156); superseded by Renewed Amendment Number 13 Effective Date: May 1, 2023.

Amendment Number 14 Effective Date: December 17, 2019, as corrected (ADAMS Accession No. ML19343B287); superseded by Renewed Amendment Number 14 Effective Date: May 1, 2023.

Amendment Number 15 Effective Date: June 14, 2021, superseded by Renewed Amendment Number 15 Effective Date: May 1, 2023.

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Renewed Certificate Expiration Date: May 31, 2060.

Model Number: HI–STORM 100.

* * * * *

Dated: January 31, 2023.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Executive Director for Operations.

[FR Doc. 2023–03002 Filed 2–10–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2021–0143]

Cyber Security Programs for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.71, ''Cyber Security Programs for Nuclear Power Reactors.'' Revision 1 incorporates references to industry guidance on identifying and protecting critical digital assets for safety-related, important to safety, balance of plant, and emergency preparedness equipment. It also clarifies guidance on defense-in-depth for cyber security and includes updated text based on the latest National Institute of Standards and Technology (NIST) and International Atomic Energy Agency (IAEA) cyber security guidance. Specifically, this revision clarifies issues identified from cyber security inspections, insights gained through the Security Frequently Asked Questions (SFAQ) process, documented cyber security attacks, new technologies, and new regulations. This revision also considers the changes in the most recent revision to the NIST Special Publications (SP) 800–53, upon which Revision 0 of Regulatory Guide (RG) 5.71, ''Cyber Security Programs for Nuclear Facilities'' was based.

DATES: Revision 1 to RG 5.71 is available on February 13, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0143 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0143. 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 individuals 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 Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 1 to RG 5.71 and the regulatory analysis may be found in ADAMS under Accession No. ML22258A204 and ML21130A636, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Kim Lawson-Jenkins, Office of Nuclear Security and Incident Response, telephone: 301–287–3656, email: *Kim.Lawson-Jenkins@nrc.gov* and Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067, email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

RG 5.71, Revision 1 is entitled ''Cyber Security Programs for Nuclear Power Reactors.'' It provides NRC licensees with guidance on meeting the cyber security requirements described in section 73.54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Protection of digital computer and communication systems and networks.''

Revision 1 clarifies guidance on defense-in-depth for cyber security and updates guidance based on the latest NIST and IAEA cyber security guidance. Revision 1 also clarifies issues identified from cyber security inspections, insights gained through the SFAQ process, lessons learned from international and domestic cyber security attacks, new technologies, and new regulations.

The proposed Revision 1 to RG 5.71 was issued with a temporary identification Draft Regulatory Guide (DG) 5061.

II. Additional Information

The NRC published a notice of availability of DG–5061 (ADAMS Accession No. ML18016A129) in the **Federal Register** on August 23, 2018 (83 FR 42623) for a 60-day public comment period. The public comment period closed on October 22, 2018. Public comments received on DG–5061 and the staff responses are available in ADAMS under Accession No. ML21266A132.

In order to incorporate updates in industry documents, DG–5061 was re-issued in the **Federal Register** on March 3, 2022 (87 FR 12208) for a 60-day public comment period. The public comment period closed on May 2, 2022. Public comments received on DG–5061 and the staff responses are available in ADAMS under Accession No. ML22258A200.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

RG 5.71 describes methods acceptable to the NRC staff for complying with the NRC's regulations to meet the regulatory requirements in 10 CFR 73.54. Issuance of this RG, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power plants.''

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 7, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–02941 Filed 2–10–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0030]

RIN 1904–AE40

Energy Conservation Program: Energy Conservation Standards for General Service Fluorescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including general service fluorescent lamps (GSFLs). EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant energy savings. In this final determination, DOE has determined that energy conservation standards for GSFLs do not need to be amended.

DATES: The effective date of this final determination is March 15, 2023.

ADDRESSES: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket/EERE-2019-BT-STD-0030.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Determination

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include GSFLs, the subject of this final determination. (42 U.S.C. 6292(a)(14)), 42 U.S.C. 6295(i)(3)–(5))

DOE is issuing this final determination pursuant to the EPCA requirement that not later than 6 years after issuance of any final rule establishing or amending a standard,

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

For this final determination, DOE analyzed GSFLs subject to standards specified in the Code of Federal Regulations (CFR) at 10 CFR 430.32(n)(1)–(3).

DOE first analyzed the technological feasibility of more energy efficient GSFLs. For those GSFLs for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (NIA). DOE evaluated whether higher standards would be cost effective by estimating the net present value (NPV) of the total costs and benefits experienced by consumers.

Based on the results of the analyses, summarized in section V of this document, DOE determined that current standards for GSFLs do not need to be amended.

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as some of the historical background relevant to the establishment of standards for GSFLs.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include GSFLs, the subject of this document. (42 U.S.C. 6292(a)(14)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(i)(1)(B)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(i)(3)–(5))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for GSFLs appear at 10 CFR part 430, subpart B, appendix R.

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6297(d))

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) In this analysis, DOE considers such energy use in its determination of whether energy conservation standards need to be amended. DOE has determined that standby mode and off mode do not apply to GSFLs and that their energy use is accounted for entirely in the active mode. Therefore, DOE is not addressing standby and off modes, and will only address active mode in this final determination.

DOE must periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product. (42 U.S.C. 6295(m)) This 6-year look-back provision requires that DOE publish either a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost effective. (42 U.S.C. 6295(m)(1)(A) and (n)(2)) Additionally, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Among the factors DOE considers in evaluating whether a proposed standard level is economically justified includes whether the proposed standard at that level is cost-effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and (o)(2)(B)(i)(II)) DOE is publishing this final determination in satisfaction of the 6-year review requirement in EPCA.

B. Background

1. Current Standards

In a final rule published on January 26, 2015, DOE prescribed the current energy conservation standards for GSFLs. 80 FR 4042 (January 2015 final

rule). These standards are set forth in DOE's regulations at 10 CFR 430.32(n)(3) and repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR GSFLS

Lamp type	Correlated color temperature	Minimum average lamp efficacy *lumens per watt ("lm/W")*
Four-Foot Medium Bipin ("MBP")	≤4,500 Kelvin ("K")	92.4
	>4,500 K and ≤7,000 K	88.7
Two-Foot U-Shaped	≤4,500 K	85.0
	>4,500 K and ≤7,000 K	83.3
Eight-Foot Single Pin ("SP") Slimline	≤ ,500 K	97.0
	>4,500 K and ≤7,000 K	93.0
Eight-Foot Recessed Double Contact ("RDC") High Output	≤4,500 K	92.0
	>4,500 K and ≤7,000 K	88.0
Four-Foot Miniature Bipin Standard Output	≤4,500 K	95.0
	>4,500 K and ≤7,000 K	89.3
Four-Foot Miniature Bipin High Output	≤4,500 K	82.7
	>4,500 K and ≤7,000 K	76.9

2. History of Standards Rulemakings for GSFLs

Amendments to EPCA in the Energy Policy Act of 1992 (EPAct 1992; Pub. L. 102–486) established energy conservation standards for certain classes of GSFLs and incandescent reflector lamps (''IRLs''), and authorized DOE to conduct two rulemaking cycles to determine whether these standards should be amended. (42 U.S.C. 6295(i)(1) and (3)–(4)) EPCA also authorized DOE to adopt standards for additional GSFLs, if such standards were warranted. (42 U.S.C. 6295(i)(5)) DOE completed the first of these rulemaking cycles in a final rule published on July 14, 2009, that adopted amended performance standards for GSFLs and IRLs manufactured on or after July 14, 2012. 74 FR 34080. That rule adopted standards for additional GSFLs, amended the definition of ''colored fluorescent lamp'' and ''rated wattage,'' and also adopted test procedures applicable to the newly covered GSFLs. *Id.* DOE completed a second rulemaking cycle to amend the standards for GSFLs and IRLs by publishing a final rule on January 26, 2015. 80 FR 4042. In that final rule, DOE amended standards for GSFLs and concluded that amending standards for IRLs would not be economically justified. *Id.* Energy conservation standards for GSFLs are set forth in 10 CFR 430.32(n). DOE test procedures for GSFLs appear at 10 CFR part 430, subpart B, appendix R.

In support of the present review of the GSFL energy conservation standards, DOE published a request for information (RFI) on May 1, 2020, which identified various issues on which DOE sought comment to inform its determination of whether amended standards for GSFLs and IRLs are warranted. 85 FR 25326 (May 2020 RFI). On May 31, 2022, DOE published a notice of proposed determination not to amend standards for GSFLs. 87 FR 32329 (May 2022 NOPD). In the May 2022 NOPD, DOE stated that it was only considering amending standards for GSFLs, and not IRLs, because of two final rules recently published on May 9, 2022. The first rule, among other things, expanded the definition of general service lamps (''GSL'') to include IRLs. 87 FR 27461. The second rule, published on that same day, implemented a statutory backstop requirement for GSLs of 45 lumens per watt (lm/W). 87 FR 27439. Because IRLs, a newly covered GSL, cannot meet the 45 lm/W backstop requirement, DOE did not evaluate amended standards for IRLs in the May 2022 NOPD. Similarly, in this final determination, DOE evaluated amended standards only for GSFLs.

DOE received comments in response to the May 2022 NOPD from the interested parties listed in Table II.2.

TABLE II.2—MAY 2022 NOPD WRITTEN COMMENTS

Commenter(s)	Reference in this final determination	Comment No. in the docket	Commenter type
Appliance Standards Awareness Project ("ASAP"), the American Council for an Energy-Efficient Economy ("ACEEE"), the New York State Energy Research and Development Authority ("NYSERDA"), and the Northwest Energy Efficiency Alliance ("NEEA").	ASAP et al	19	Efficiency Organizations.
National Electrical Manufacturers Association	NEMA	18	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[3]

[3] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2019–BT–STD–0030, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

III. General Discussion

DOE developed this final determination after considering comments, data, and information from interested parties that represent a variety of interests. This final determination addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE

divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) The product classes for this final determination are discussed in further detail in section IV.A.4 of this document. This final determination covers GSFLs defined as any fluorescent lamp which can be used to satisfy the majority of fluorescent lighting applications, but does not include any lamp designed and marketed for the following nongeneral application: (1) Fluorescent lamps designed to promote plant growth; (2) Fluorescent lamps specifically designed for cold temperature applications; (3) Colored fluorescent lamps; (4) Impact-resistant fluorescent lamps; (5) Reflectorized or aperture lamps; (6) Fluorescent lamps designed for use in reprographic equipment; (7) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (8) Lamps with a Color Rendering Index of 87 or greater. 10 CFR 430.2. The scope of coverage is discussed in further detail in section IV.A.1 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)) DOE's current energy conservation standards for GSFLs are expressed in terms of lm/W (*see* 10 CFR part 430, subpart B, appendix R).

On July 6, 2009, DOE published a final rule that updated citations to industry standards and made several other modifications to the GSFL test procedure. 74 FR 31829. DOE further amended the test procedures to update references to industry standards for GSFLs in a final rule published on January 27, 2012. 77 FR 4203. On August 8, 2017, DOE published a RFI seeking comments on the current test procedures for GSFLs, IRLs, and general service incandescent lamps (GSILs). 82 FR 37031. On June 3, 2021, DOE published a NOPR proposing amendments to DOE's GSFL, IRL and GSIL test procedures. 86 FR 29888. On August 31, 2022, DOE published a final rule adopting the proposed amendments. 87 FR 53618. In that final rule, with regard to GSFLs, DOE updated the latest versions of the referenced industry test standards and provided cites to specific sections of these standards; clarified definitions, test conditions and methods, and measurement procedures; clarified test frequency and inclusion of cathode power in measurements; allowed manufacturers to make voluntary (optional) representations of GSFLs at high frequency settings; revised the sampling requirements; and aligned sampling and certification requirements with adopted test procedure terminology and with the Federal Trade Commission's labeling program. 87 FR 53618, 53620–53621.

The current test procedures for GSFLs are codified in appendix R to subpart B of 10 CFR part 430.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of 10 CFR part 430, subpart C, appendix A (appendix A).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.A.3 of this document discusses the results of the screening analysis for GSFLs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this final determination. For further details on the screening analysis for this final determination, see chapter 4 of the final determination technical support document (TSD).

2. Maximum Technologically Feasible Levels

As when DOE proposes to adopt an amended standard for a type or class of covered product, in this analysis it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such a product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for GSFLs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.B of this final determination and in chapter 5 of the final determination TSD.

D. Energy Savings

1. Determination of Savings

For each efficiency level (EL) evaluated, DOE projected energy savings from application of the EL to the GSFLs purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2026–2055). The savings are measured over the entire lifetime of the GSFLs purchased in the previous 30-year period. In order to account for wider market dynamics, DOE also modeled the purchases and energy consumption of tubular light-emitting diodes (TLEDs) over the same period that would compete for GSFL demand. DOE quantified the energy savings attributable to each EL as the difference in energy consumption of both GSFLs and TLEDs between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards. DOE used its NIA spreadsheet model [4] to estimate national energy savings (NES) from potential amended or new standards for GSFLs. The NIA spreadsheet model (described in section IV.F of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity,

[4] A model coded in the Python programming language to estimate lamp purchases, energy consumption, and national energy savings.

DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[5] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.F of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A)) The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

E. Cost Effectiveness

Under EPCA's six-year-lookback review provision for existing energy conservation standards at 42 U.S.C. 6295(m)(1), cost-effectiveness of potential amended standards is a relevant consideration both where DOE proposes to adopt such standards, as well as where it does not. In considering cost-effectiveness when making a determination of whether amended energy conservation standards do not need to be amended, DOE considers the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(m)(1)(A) (*referencing* 42 U.S.C. 6295(n)(2))) Additionally, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Cost-effectiveness is one of the factors that DOE considers under 42 U.S.C. 6295(o)(2)(B) in determining whether new or amended standards are economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(II))

In determining cost effectiveness of amending standards for covered products, DOE generally conducts life-cycle cost (LCC) and payback period (PBP) analyses that estimate the costs and benefits to users from potential standards. Based on the rapidly declining shipments of GSFLs, and limited and uncertain energy savings opportunity, as discussed in sections IV.C, IV.E, and V.C of this final determination, DOE did not conduct LCC and PBP analyses to evaluate the economic impacts on individual consumers of amended GSFL energy conservation standards. To further inform DOE's consideration of the cost effectiveness of potential amended standards, DOE considered the NPV of total costs and benefits estimated as part of the NIA. The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

F. Further Considerations

Pursuant to EPCA, absent DOE publishing a notification of determination that energy conservation standards for GSFLs do not need to be amended, DOE must issue a NOPR that includes new proposed standards. (42 U.S.C. 6295(m)(1)(B)) The new proposed standards in any such NOPR must be based on the criteria established under 42 U.S.C. 6295(o) and follow the procedures established under 42 U.S.C. 6295(p). (42 U.S.C. 6295(m)(1)(B)) The criteria in 42 U.S.C. 6295(o) require that standards be designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges for, or maintenance expenses of the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this final determination with regard to GSFLs. Separate subsections address each component of DOE's analyses. DOE used several analytical tools to estimate the impact of potential energy conservation standards. The NIA uses a spreadsheet set that provides shipments projections and calculates NES and net present value of total consumer costs and savings expected to result from potential energy conservation standards. These spreadsheet tools are available on the website: *www.regulations.gov/docket?D=EERE–2019–BT–STD–0030.*

DOE received general comments on the May 2022 NOPD. NEMA stated that it agreed with DOE's proposed determination to not amend current energy conservation standards for GSFLs because the technology is highly mature, and its market share is in sharp decline. (NEMA, No. 18 at p. 2)

ASAP et al. commented that in the May 2022 NOPD, DOE stated that projected energy savings from more stringent standards are due to a faster market shift to solid state lighting rather than reduction in GSFL energy use. ASAP et al. stated that this conclusion indicates that significant savings can be achieved by regulating linear lamps under a technology-neutral standard, which would accelerate transition of the market to light-emitting diodes (LEDs). ASAP et al. stated that NEMA's lamp

[5] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

sales index in the first quarter (Q1) of 2022 reported about two thirds of linear lamp shipments were still fluorescent. Specifically, ASAP et al. stated that because GSFLs and TLEDs provide the same utility for consumers, it makes sense to subject them to the same standards. (ASAP et al., No. 19 at pp. 1–2)

Further, ASAP et al. stated that replacing a linear fluorescent lamp with the more efficient TLED can reduce power consumption by 50 percent. It also stated that a 2022 ASAP and American Council for an Energy-Efficient Economy report estimated that a complete transition from fluorescent to LED lighting would yield cumulative carbon dioxide (CO_2) emissions reductions of about 200 million metric tons through 2050, the vast majority of which would come from linear lamps. ASAP et al. acknowledged that in the May 2022 NOPD, DOE stated that this rulemaking cannot address any product that does not meet the definition of a GSFL. ASAP et al. encouraged DOE to explore the possibility of setting a technology-neutral standard for all linear lamps in a separate rulemaking. (ASAP et al., No. 19 at p. 2)

In the May 2022 NOPD, DOE stated that the proposed determination addresses only GSFLs defined in 10 CFR 430.2, which do not include TLEDs. DOE stated that it is not authorized to consider any product not meeting this definition, such as TLEDs, as a part of this proposed determination. 87 FR 32329, 32336. Hence in the May 2022 NOPD, DOE did not conduct an analysis in which the scope of coverage included TLEDs. For the same reasons as stated in the May 2022 NOPD, DOE did not include TLEDs in the analysis of this final determination. However, as in the May 2022 NOPD, DOE agrees with ASAP et al. that TLEDs have gained market share at the expense of GSFLs and are suitable substitutes for GSFLs. Certain types of TLEDs are included in the definition of GSL in 10 CFR 430.2, and DOE is currently evaluating amending standards for GSLs in a NOPR published on January 11, 2023. 88 FR 1638.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this final determination include (1) a determination of the scope and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of GSFLs. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the final determination TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

In this analysis, DOE relied on the definition of fluorescent lamp and general service fluorescent lamp in 10 CFR 430.2. A fluorescent lamp is a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following: (1) any 4-foot straight-shaped, medium bipin lamp with a rated wattage of 25 or more; (2) any 2-foot U-shaped, medium bipin (MBP) lamp with a rated wattage of 25 or more; (3) any 8-foot rapid start, recessed double contact (RDC) base, high output (HO) lamp; (4) any 8-foot instant start, single pin (SP) base, slimline lamp with a rated wattage of 49 or more; (5) any 4-foot straight-shaped, miniature bipin (MiniBP) standard output (SO) lamp with a rated wattage of 25 or more; and (6) any 4-foot straight-shaped, MiniBP HO lamp with a rated wattage of 44 or more. 10 CFR 430.2. GSFL is defined as any fluorescent lamp which can be used to satisfy the majority of fluorescent lighting applications, but does not include any lamp designed and marketed for the following nongeneral application: (1) fluorescent lamps designed to promote plant growth; (2) fluorescent lamps specifically designed for cold temperature applications; (3) colored fluorescent lamps; (4) impact-resistant fluorescent lamps; (5) reflectorized or aperture lamps; (6) fluorescent lamps designed for use in reprographic equipment; (7) lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (8) lamps with a color rendering index (CRI) of 87 or greater. 10 CFR 430.2. Any product meeting the definition of GSFL is included in DOE's scope of coverage, though all products within the scope of coverage may not be subject to standards.

NEMA stated that there are energy saving opportunities in regulating the currently exempt linear fluorescent lamps with CRI of 87 or greater (high CRI). NEMA further stated that over the past years nine states (VT, CO, HI, WA, MA, OR, NV, NJ, MD) and the District of Columbia have passed regulations requiring high CRI linear fluorescent lamps meet current DOE efficiency standards. NEMA stated that these regulations are inconsistent in terms of effective dates and types of restriction (*e.g.,* sell-by, install by, manufacture by) and therefore, are administratively burdensome and increase risk of non-compliance and enforcement confusion for manufacturers, distributors, and retailers. NEMA further stated that in its April 2022 Forward Regulatory Plan, Canada's Office of Energy Efficiency also proposed to remove the exemption of high CRI fluorescent lamps from its energy efficiency standards. Based on potential energy savings and to provide uniformity in regulations at the national level and to continue to align with Canada's appliance energy efficiency standards, NEMA recommended that DOE expand the scope of this rulemaking to include high CRI linear fluorescent lamps and subject them to current energy efficiency standards. (NEMA, No. 18 at p. 2)

NEMA recommended a three-year implementation period of subjecting the high CRI lamps to current energy efficiency standards based on a manufacture by end-date. NEMA stated that three-year implementation periods are common in DOE's lighting product rulemakings and industry is familiar with the timeline. (NEMA, No. 18 at p. 2)

ASAP et al. also encouraged DOE to address energy savings opportunities from exempt fluorescent lamps including high CRI lamps. ASAP et al. stated that as standards for non-exempt GSFLs have been implemented, use of certain exempt lamps has become more widespread as the lamps are marketed for general use. In particular, ASAP et al. commented that high CRI and impact resistant linear lamps have gained in market share and will continue to do so. ASAP et al. stated that this is particularly problematic as most high CRI and to a lesser extent impact resistant lamps are being sold as T12 lamps, which are generally the most inefficient. ASAP et al. stated that the 2015 U.S. Lighting Market Characterization (LMC) report showed average efficacies of T12 lamps to be 70 to 80 lumens per watt (lm/W) and a recent review of the market showed a high CRI 4-foot medium bipin T12 lamp for sale with an efficacy of 55 lm/W (*i.e.,* almost 40 percent less efficacious than a lamp that just meets current GSFL

energy efficiency standards). Further, ASAP et al. stated that the shift to TLEDs is impacting T8 lamps while the market share of T12 lamps remains relatively steady and will continue to do so in the absence of standards. ASAP et al. stated that according to NEMA lamp sales indexes, in Q1 2022, T8, T12, and T5 lamps accounted for 49.6, 9.7, and 7.5 percent of the market of linear fluorescent lamps, respectively. ASAP et al. also stated that a 2019 California Energy Commission report estimated that replacing a 4-foot T12, 8-foot standard output T12, and 8-foot high output T12 with a compliant T8 lamp yields energy savings of 45 kilowatt hour per year (kWh/yr), 83 kWh/yr, and 126 kWh/yr, respectively. (ASAP et al., No. 19 at pp. 2–3)

Finally, similar to comments provided by NEMA (see NEMA, No. 18 at p. 2), ASAP et al. cited states that had adopted regulations for high CRI lamps and additionally noted that in May 2022, New York state passed legislation that would give the New York State Energy Research and Development Authority the power to set standards for federally exempt fluorescent lamps, and in July 2022, the California Energy Commission announced ''Federally Exempted Linear Fluorescent Lamps'' as an upcoming standards rulemaking. (ASAP et al., No. 19 at p. 3)

ASAP et al. acknowledged that DOE stated in the May 2022 NOPD that it cannot modify the definition of GSFL to include statutorily exempt lamps in this rulemaking. ASAP et al. encouraged DOE to pursue setting standards for exempt lamps in a separate rulemaking. (ASAP et al., No. 19 at pp. 2–3)

In the May 2022 NOPD, DOE stated that exemptions for high CRI lamps and impact resistant fluorescent lamps are included in the statutory definition of ''general service fluorescent lamp'' (42 U.S.C. 6291(30)(B)) and it is not within the scope of DOE's authority in this rulemaking to modify these statutory exemptions. Additionally, as stated in the May 2022 NOPD, DOE finds no basis in the language of EPCA to support assertions that the agency's authority to consider energy conservation standards for ''additional'' GSFL under 42 U.S.C. 6295(i)(5) is unlimited. As discussed in the May 2022 NOPD, DOE interprets section 6295(i)(5) to cover additional GSFL that are not one of the lamps excluded from the definition of GSFL in 42 U.S.C. 6291(30)(B). 87 FR 32329, 32335–36. For these reasons, DOE did not consider high CRI lamps to be in the scope of this rulemaking.

2. Technology Options

In the May 2022 NOPD, DOE identified several technology options that would be expected to improve the efficiency (*i.e.,* efficacy or lumens per watt) of GSFLs, as measured by the DOE test procedure. To develop a list of technology options, DOE reviewed manufacturer catalogs, recent trade publications and technical journals, and the January 2015 final rule. In addition to the technology options identified in the January 2015 final rule, DOE identified mercury isotopes as a technology option that can be implemented to improve the efficiency of GSFLs. Mercury used in GSFLs is composed of seven different isotopes, each having a distinct excited state that provides ultraviolet (UV) light. The abundance of these isotopes can be altered to optimize the amount of UV light emitted and increase the efficiency of the lamp. 87 FR 32329, 32336. For more detail on this technology option, see chapter 3 of the final determination TSD.

NEMA stated that it agreed with DOE's assessment of technology options. (NEMA, No. 18 at p. 2)

In summary, in this final determination, DOE considers the technology options proposed in the May 2022 NOPD and shown in Table IV.1. Detailed descriptions of these technology options can be found in chapter 3 of the final determination TSD.

TABLE IV.1—GSFL TECHNOLOGY OPTIONS

Technology option	Description
Highly Emissive Electrode Coatings	Improved electrode coatings allow electrons to be more easily removed from electrodes, reducing lamp power and increasing overall efficacy.
Higher Efficiency Lamp Fill Gas Composition.	Fill gas compositions improve cathode thermionic emission or increase mobility of ions and electrons in the lamp plasma.
Higher Efficiency Phosphors	Phosphors increase the conversion of UV light into visible light.
Glass Coatings	Coatings on inside of bulb enable the phosphors to absorb more UV energy, so that they emit more visible light.
Higher Efficiency Lamp Diameter	Optimal lamp diameters improve lamp efficacy.
Multi-Photon Phosphors	Phosphors emit more than one visible photon for each incident UV photon.
Mercury Isotopes	The abundance of mercury isotopes can be altered to optimize the amount of UV light emitted and increase the efficiency of the lamp.

3. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. NEMA commented that it agreed with DOE's screening analysis in the May 2022 NOPD. (NEMA, No. 18 at p. 2)

a. Screened-Out Technologies

In the May 2022 NOPD, DOE did not find that multi-photon phosphors or mercury isotopes are being used in working prototypes or in commercially available products. 87 FR 32329, 32337. Therefore, as in the May 2022 NOPD, in this final determination DOE has screened out multi-photon phosphors and mercury isotopes based on technological feasibility. See chapter 4 of the final determination TSD for further details on the GSFL screening analysis.

b. Remaining Technologies

After reviewing each technology, and consistent with the May 2022 NOPD (87 FR 32329, 32337), DOE did not screen out the following technology options and considers them as design options in the engineering analysis:

(1) Highly Emissive Electrode Coatings
(2) Higher Efficiency Lamp Fill Gas Composition
(3) Higher Efficiency Phosphors
(4) Glass Coatings
(5) Higher Efficiency Lamp Diameter

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final determination TSD.

4. Product Classes

In general, when evaluating and establishing energy conservation standards, DOE divides the covered product into classes by (1) the type of energy used, (2) the capacity of the product, or (3) any other performance-related feature that affects energy efficiency and justifies different standard levels, considering factors such as consumer utility. (42 U.S.C. 6295(q))

a. Existing Product Classes

For GSFLs, the current energy conservation standards specified in 10 CFR 430.32(n)(4) are based on 12 product classes, separated according to the following three factors: (1) correlated color temperature (CCT); (2) physical constraints of lamps (*i.e.,* lamp shape and length); and (3) lumen package (*i.e.,* standard output (''SO'') versus high output (HO)).

b. Summary

Having received no comments on product classes, as proposed in the May 2022 NOPD (87 FR 32329, 32337), DOE maintains the existing separate product classes for GSFLs based on the following three factors: (1) CCT (*i.e.,* less than or equal to versus greater than 4,500 K); (2) physical constraints of lamps (*i.e.,* lamp shape and length); and (3) lumen package (*i.e.,* SO versus HO). In summary, DOE assesses the product classes shown in Table IV.2 in its analysis.

TABLE IV.2—GSFL PRODUCT CLASSES

Lamp type	CCT
4-foot medium bipin (''MBP'')	≤4,500 K
	>4,500 K
2-foot U-shaped	≤4,500 K
	>4,500 K
8-foot single pin slimline	≤4,500 K
	>4,500 K
8-foot recessed double contact high output	≤4,500 K
	>4,500 K
4-foot T5, miniature bipin standard output	≤4,500 K
	>4,500 K
4-foot T5, miniature bipin high output	≤4,500 K
	>4,500 K

B. Engineering and Cost Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of GSFLs. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max tech'' level exceeds the maximum efficiency level currently available on the market).

In this final determination, DOE is adopting an efficiency-level approach for GSFLs. For GSFLs, efficiency levels (ELs) are determined as lumens per watt, which is known as the lamp's efficacy. DOE derives ELs in the efficiency analysis and end-user prices in the cost analysis. DOE estimates the end-user price of GSFLs directly because reverse-engineering a lamp is impractical, as the lamps are not easily disassembled. By combining the results of the efficiency analysis and the cost analysis, DOE derives typical inputs for use in the LCC and NIA. Section IV.B.2 discusses the cost analysis (see chapter 5 of the final determination TSD for further details).

The methodology for the efficiency analysis consists of the following steps: (1) select representative product classes, (2) select baseline lamps, (3) identify more efficacious substitutes, (4) develop ELs by directly analyzing representative product classes, and (5) scale ELs to non-representative product classes. The

efficiency analysis is discussed in the sections following and further details are provided in chapter 5 of the final determination TSD.

a. Representative Product Classes

In the case where a covered product has multiple product classes, DOE identifies and selects certain product classes as ''representative'' and concentrates its analytical effort on those classes. DOE chooses product classes as representative primarily because of their high market volumes. DOE then scales its analytical findings for those representative product classes to other product classes that are not directly analyzed. As in the May 2022 NOPD (87 FR 32329, 32338), in this final determination, based on its assessment of product offerings, DOE analyzed as representative all GSFLs with CCTs less than or equal to 4,500 K with the exception of the 2-foot U-shaped lamps, as shown in gray in Table IV.3 of this document. DOE did not directly analyze GSFLs with CCTs greater than 4,500 K or GSFLs that are 2-foot U-shaped lamps of any CCT due to low shipment volumes.

TABLE IV.3—GSFL REPRESENTATIVE PRODUCT CLASSES

Lamp type	CCT
4-foot medium bipin	≤4,500 K
	>4,500 K
2-foot U-shaped	≤4,500 K
	>4,500 K
8-foot single pin slimline	≤4,500 K
	>4,500 K
8-foot recessed double contact high output	≤4,500 K
	>4,500 K
4-foot T5, miniature bipin standard output	≤4,500 K
	>4,500 K
4-foot T5, miniature bipin high output	≤4,500 K
	>4,500 K

b. Baseline Efficiency

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

In the May 2022 NOPD, to identify baseline lamps for this analysis, DOE reviewed data in the compliance certification database, product offerings in catalogs and on retailer websites, and manufacturer feedback obtained during interviews. DOE used the efficacy values of lamps in the compliance certification database to select baseline lamps. For representative product classes without certification data at the baseline, DOE used catalog and retailer data to select a baseline lamp. Specifically, DOE selected a baseline lamp from a retailer for the 8-foot SP slimline product class because DOE was unable to identify any lamp in the compliance certification database that just meets the existing standards with common attributes for lamps in the product class. 87 FR 32329, 32338. DOE utilized the same methodology in this final determination as in the May 2022 NOPD. In this final determination, as in the May 2022 NOPD (87 FR 32329, 32338), DOE selected the GSFL baseline lamps specified in Table IV.4. See chapter 5 of the final determination TSD for more detail.

TABLE IV.4—GSFL BASELINE LAMPS

Representative product class	Lamp diameter	Nominal wattage	Efficacy **	Initial lumen output	Mean lumen output	Rated life ***	CRI
		W	*lm/W*	*lm*	*lm*	*hr*	
4-foot MBP	T8	32	92.4	3,050	2,910	24,000	85
8-foot SP slimline	T8	59	98.2	5,900	5,430	15,000	82
8-foot RDC HO	T8	86	94.6	8,000	7,520	18,000	78
4-foot T5 MiniBP SO *	T5	28	95.9	2,610	2,453	24,000	85
4-foot T5 MiniBP HO *	T5	54	83	4,500	4,140	30,000	85

* 4-foot T5 MiniBP SO and HO initial lumen output, and mean lumen output given at 25 °C. Initial and mean lumens are calculated from catalog lumens at 35 °C by applying a 10 percent lumen reduction.

** Efficacy is from the compliance certification database, if available, or catalog initial lumen output divided by the American National Standards Institute (''ANSI'') rated wattage if the lamp does not have certification data.

*** Rated life is based on an instant start ballast with 3 hour starts for the 4-foot MBP and 8-foot SP slimline product classes and a programmed start ballasts with 3 hour starts for all other product classes.

c. More Efficacious Substitutes

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product. DOE selects more efficacious replacements for the baseline lamps considered within each representative product class. DOE considers only design options identified in the screening analysis. In the May 2022 NOPD, more efficacious substitutes were selected such that, where possible, potential substitutions maintained light output within 10 percent of the baseline lamp's light output. DOE also sought to keep characteristics of substitute lamps, such as CCT, CRI, and lifetime, as similar as possible to the baseline lamps. DOE used efficacy data from the compliance certification database to identify more efficacious substitutes in all product classes. DOE ensured that all more efficacious substitutes selected showed an improvement in efficacy of at least one percent from the previous level. DOE identified more efficacious substitutes that typically represent a group of lamps in the compliance certification database with similar efficacy data. 87 FR 32329, 32339.

NEMA commented that it agreed with DOE's assessment of potentially more efficacious substitutes, in particular issues regarding performance such as dimming and other inversely proportional relationships between technology options and performance. (NEMA, No. 18 at p. 3)

DOE utilized the same methodology for identifying more efficacious substitutes in this final determination as in the May 2022 NOPD. In this final determination, as in the May 2022 NOPD (87 FR 32329, 32339), DOE analyzed the more efficacious substitutes shown in Table IV.5 of this document. See chapter 5 of the final determination TSD for more detail.

TABLE IV.5—GSFL MORE EFFICACIOUS SUBSTITUTES

Product classes	EL	Lamp diameter	Nominal wattage	Efficacy **	Initial light output	Mean light output	Rated life ***	CRI
			W	*lm/W*	*lm*	*lm*	*hr*	
4-foot MBP	EL 1	T8	32	93.6	3,200	3,010	24,000	85
	EL 2	T8	32	94.6	3,100	2,915	24,000	85
	EL 2	T8	25	100.8	2,300	2,230	32,000	85
	EL 2	T8	28	100.3	2,725	2,560	24,000	85
8-foot SP slimline	EL 1	T8	59	99.6	5,900	5,430	18,000	82
	EL 2	T8	59	102.8	6,100	5,730	24,000	85
	EL 2	T8	49	105.4	5,000	4,700	24,000	82
8-foot RDC HO	EL 1	T8	86	99.0	8,200	7,800	18,000	85
	EL 2	T8	86	108.4	8,200	7,710	18,000	85
T5 MiniBP SO *	EL 1	T5	28	97.0	2,610	2,394	30,000	85
	EL 2	T5	28	98.8	2,610	2,427	36,000	85
	EL 3	T5	28	100.8	2,610	2,408	24,000	82
	EL 3	T5	26	101.0	2,610	2,394	25,000	85
T5 MiniBP HO *	EL 1	T5	54	85.6	4,500	4,185	30,000	85
	EL 1	T5	49	88.8	4,365	4,140	36,000	85
	EL 2	T5	54	89.8	4,500	4,050	30,000	82
	EL 2	T5	47	90.0	4,320	3,969	30,000	84
	EL 3	T5	54	96.4	4,365	4,140	36,000	85
	EL 3	T5	49	96.5	4,500	4,005	30,000	85

* 4-foot T5 MiniBP SO and HO rated efficacy, initial lumen output, and mean lumen output given at 25 °C. Initial and mean lumens are calculated from catalog lumens at 35 °C by applying a 10 percent lumen reduction.

** Efficacy is from the compliance certification database, if available, or catalog/retailer initial lumen output divided by the ANSI rated wattage if the lamp does not have certification data.

*** Rated life is based on an instant start ballast with 3 hour starts for the 4-foot MBP and 8-foot SP slimline product classes and a programmed start ballasts with 3 hour starts for all other product classes.

d. Higher Efficiency Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product.

After identifying more efficacious substitutes for each of the baseline lamps, in the May 2022 NOPD, DOE developed ELs based on the consideration of several factors, including: (1) The design options associated with the specific lamps being studied (*e.g.,* grades of phosphor); (2) the ability of lamps across wattages to comply with the standard level of a given product class; and (3) max-tech level. Although fluorescent lamps are a component of a system that often includes ballasts and fixtures, DOE based its ELs only on lamp performance because GSFLs are the subject of this analysis. DOE acknowledges, however, that the energy consumption of fluorescent lamps is related to the ballast on which they operate. Therefore, in the May 2022 NOPD, DOE paired each lamp with an appropriate ballast to better approximate real-world conditions. 87 FR 32329, 32340. DOE utilized the same methodology in this final determination as in the May 2022 NOPD (see section IV.B.1.e of this document for more information).

In the May 2022 NOPD, to determine appropriate ELs, DOE used efficacy values of lamps certified in its compliance certification database. DOE considered only ELs at which a full wattage version of the lamp type was available because reduced wattage lamps have limited dimming capability. 87 FR 32329, 32340. DOE utilized the same methodology in this final determination as in the May 2022 NOPD. In this final determination, as in the May 2022 NOPD, DOE identified the ELs summarized in Table IV.6 of this document. See chapter 5 of the final determination TSD for more detail.

TABLE IV.6—SUMMARY OF ELS FOR GSFL REPRESENTATIVE PRODUCT CLASSES

CCT	Lamp type	Efficacy level *lm/W*		
		1	2	3
≤4,500 K	4-foot MBP	93.6	94.6	N/A
	8-foot SP slimline	99.6	102.8	N/A
	8-foot RDC HO	99.0	108.4	N/A
	4-foot T5 MiniBP SO	97.0	98.8	100.8
	4-foot T5 MiniBP HO	85.6	89.8	96.4

e. Lamp-and-Ballast Systems

Because fluorescent lamps operate on a ballast in practice, in the May 2022 NOPD, DOE analyzed lamp-and-ballast systems in the engineering analysis. DOE determined that pairing a lamp with a ballast more accurately captures real-world energy use and light output. 87 FR 32329, 32340.

In the May 2022 NOPD, DOE considered two different scenarios in the engineering analysis: (1) A lamp replacement scenario in which the consumer selects a replacement lamp that can operate on the installed ballast and (2) a lamp-and-ballast replacement scenario in which the consumer selects a new lamp and also selects a new ballast with potentially different performance characteristics, such as ballast factor [6] (BF) or ballast luminous

[6] BF is defined as the output of a ballast delivered to a reference lamp in terms of power or light

Continued

efficiency [7] (BLE). DOE only selected replacement systems that do not have higher energy consumption than the baseline system. For both substitution scenarios, DOE determined energy consumption by calculating the system input power of the lamp-and-ballast system. 87 FR 32329, 32340.

The system input power represents the energy consumption rate of both the lamp and ballast, and therefore is greater than the rated power of the lamp alone. In addition to the rated lamp power, the system input power is also affected by the number of lamps operated per ballast, BLE of ballast used, starting method, and the BF of that ballast.

DOE used the same methodology and determined the same results as in the May 2022 NOPD for the energy consumption of the lamp and ballast systems in this final determination. See chapter 5 of the final determination TSD for more detail.

f. Scaling to Other Product Classes

As noted previously, DOE analyzes the representative product classes directly. DOE then scales the levels developed for the representative product classes to determine levels for product classes not analyzed directly. For GSFLs, the representative product classes analyzed were all lamp types with CCTs ≤4,500 K, with the exception of 2-foot U-shaped lamps.

In the May 2022 NOPD, lamp types with CCTs less than or equal to 4,500 K were scaled to obtain levels for higher CCT product classes not analyzed. DOE found variation in the percent reduction in efficacy associated with increased CCT among product classes and therefore chose to develop a separate scaling factor for each product class. DOE developed scaling factors by identifying pairs and comparing the efficacies between the same lamp type from the same manufacturer within the same product class but that differed by CCT. 87 FR 32329, 32340.

In the May 2022 NOPD, for 2-foot U-shaped lamps, DOE compared catalog and certification data for 2-foot U-shaped lamps with equivalent 4-foot MBP lamps, and determined an average efficacy reduction of 6 percent from the 4-foot MBP lamps was appropriate. For the higher CCT product classes, DOE determined a 4 percent scaling factor for the 4-foot MBP product class, 2 percent scaling factor for the 2-foot U-shaped product class, 3 percent scaling factor for the 8-foot SP slimline product class, 3 percent scaling factor for the 8-foot RDC HO product class, 6 percent scaling factor for the T5 SO product class, and 6 percent scaling factor for the T5 HO product class were appropriate. 87 FR 32329, 32341.

DOE used the same methodology and determined the same results as in the May 2022 NOPD for the scaled ELs of the non-representative product classes in this final determination. See chapter 5 of the final determination TSD for more detail. Table IV.7 summarizes the ELs for all GSFL product classes.

TABLE IV.7—SUMMARY OF ALL EFFICACY LEVELS FOR GSFLS

CCT	Lamp type	Efficacy level		
		1	2	3
≤4,500 K	4-foot medium bipin	93.6	94.6	.....
	2-foot U-shaped	88.0	88.9	.....
	8-foot single pin slimline	99.6	102.8	.....
	8-foot recessed double contact HO	99.0	108.4	.....
	4-foot T5 miniature bipin SO	97.0	98.8	100.8
	4-foot T5 miniature bipin HO	85.6	89.8	96.4
>4,500 K	4-foot medium bipin	89.9	90.8	.....
	2-foot U-shaped	86.2	87.1	.....
	8-foot single pin slimline	96.6	99.7	.....
	8-foot recessed double contact HO	96.0	105.1	.....
	4-foot T5 miniature bipin SO	91.2	92.9	94.8
	4-foot T5 miniature bipin HO	80.5	84.4	90.6

2. Cost Analysis

The cost analysis portion of the Engineering Analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product and the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

Physical teardowns: Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.

Catalog teardowns: In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.

Price surveys: If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the May 2022 NOPD, DOE conducted the cost analysis using the price survey approach. Typically, DOE develops manufacturer selling prices (''MSPs'') for covered products and applies markups to create end-user prices to use as inputs to the LCC analysis and NIA. Because GSFLs are difficult to reverse-engineer (*i.e.,* not easily disassembled), DOE directly derived end-user prices for the covered lamps in the May 2022 NOPD. The end-

divided by the output of the relevant reference ballast delivered to the same lamp (ANSI C82.13–2002). Because BF affects the light output of the system, manufacturers design ballasts with a range of ballast factors to allow consumers to vary the light output, and thus power consumed, of a fluorescent system. See the fluorescent lamp ballast (FLB) final determination (published on October 22, 2019, 85 FR 81558) TSD chapter 3. The FLB Energy Conservation Standards final determination materials are available at *www.regulations.gov/docket?D=EERE-2015-BT-STD-0006.*

[7] BLE is the ratio of the total lamp arc power to ballast input power, multiplied by the appropriate frequency adjustment factor.

user price refers to the product price a consumer pays before tax and installation. Because GSFLs operate with a ballast in practice, DOE also incorporated prices for ballasts that operate those lamps in the May 2022 NOPD. 87 FR 32329, 32341.

Because the range of end-user prices paid for a lamp depended on distribution channel, DOE identified the following three main distribution channels to analyze in the May 2022 NOPD: Small consumer-based distributors (*i.e.,* internet retailers, drug stores); large retail distributors (*i.e.,* home centers, mass merchants, hardware stores, and electrical distributors); and state procurement. 87 FR 32329, 32341.

In the May 2022 NOPD, for each distribution channel, DOE calculated an average price for the representative lamp unit at each EL using prices for the representative lamp unit and similar lamp models at the same level. Because the lamps included in the calculation were equivalent to the representative lamp unit in terms of performance and utility (*i.e.,* had similar wattage, CCT, shape, base type, CRI, and technology), DOE considered the pricing of these lamps to be representative of the technology of the EL. DOE developed average end-user prices for the representative lamp units sold in each of the three main distribution channels analyzed. DOE then calculated an average weighted end-user price using estimated shipments through each distribution channel. 87 FR 32329, 32341.

DOE used the same methodology and determined the same results as in the May 2022 NOPD for end-user prices in this final determination. Table IV.8 summarizes the weightings used for the GSFL main distribution channels.

Table IV.9 summarizes the weightings within the large retail distributors. See chapter 5 of the final determination TSD for more detail.

TABLE IV.8—WEIGHTINGS FOR GSFL DISTRIBUTION CHANNELS

Main channels	Weighting (%)
State Procurement	10
Large retail distributors	70
Online Retailers	20

TABLE IV.9—WEIGHTINGS WITHIN LARGE RETAIL DISTRIBUTOR CHANNEL

Main channels	Description	GSFL weighting (%)
Large Retail Distributors.	Mass merchants and Home centers.	11
	Hardware stores.	1
	Electrical distributors.	88

C. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of GSFLs at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased GSFL efficiency. The energy use analysis estimates the range of energy use of GSFLs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE determined the annual energy consumption of GSFLs using information on their power (*i.e.,* the rate of energy they consume), developed in the engineering analysis, and the way consumers use them (*i.e.,* their operating hours per year).

To estimate operating hours for linear lamps in the residential sector, DOE utilized the same methods as in the May 2022 NOPD. DOE estimated the national weighted-average hours-of-use (HOU) of linear lamps to be 2.1 hours per day in the residential sector. The national weighted-average HOU for linear lamps GSFLs in the commercial sector were estimated at 8.1 hours per day.

Max-tech parameters, including system arc power, BF, and BLE have not been updated for the max-tech levels described in section IV.B.1 of this final determination.

Table 6.3.1 in section 6.3 of the final determination TSD presents results of the energy use analysis for GSFL purchases in units of kilowatt-hours per year (kWh/yr).

Chapter 6 of the final determination TSD provides details on DOE's energy use analysis for GSFLs.

D. Life-Cycle Cost and Payback Period Analysis

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for covered products. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE typically uses the following two metrics to measure consumer impacts:

The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Based on the rapidly declining shipments of GSFLs, and limited and uncertain energy savings opportunity, as discussed in sections IV.D, IV.F, and V.C of this final determination, DOE did not conduct LCC and PBP analyses to evaluate the economic impacts on individual consumers of amended GSFL energy conservation standards. DOE received no comments on its decision not to conduct LCC and PBP analyses.

E. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[8] The shipments model takes an accounting approach in tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. DOE used a model coded in the Python

[8] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

programming language to compute an estimate of shipments and stock in each projection year up through the end of the analysis period (2021–2055). DOE included 4-foot T8, 4-foot T5 standard output and 4-foot T5 high output representative lamps in its shipments model. While T8 lamps represent the largest part of the GSFL market, the T5 product classes have engineering options with lower wattage options at higher ELs that may result in energy savings for consumers. The 8-foot RDC HO product class does not include any lamp options at higher ELs that reduce energy compared to the baseline lamp, and the only lamp option in the 8-foot SP slimline product class that would reduce energy consumption does not offer the same utility as the other representative lamp options because its lumen output is more than 10 percent lower. These lamp categories with smaller markets and without potential energy savings at higher efficiency levels were excluded from analysis due to the fact that there would be either no or miniscule savings.

DOE seeded this model with estimates of total historical shipments derived from the January 2015 final rule (up through data year 2015) and sales indices of the linear lamp market published by NEMA [9] (for data years 2015–2020). These indices show a steep decline of GSFL sales for lamps of all types over this five year period. In order to account for LED competition for GSFL applications, DOE included representative T8 and T5 LED replacement lamps in the shipments model (see the chapter 7 of the final determination TSD for details). DOE assumed that in each shipment's projection year, demand for replacements would be the only source of demand for new lamp purchases. Demand for replacement lamps in each year is allotted among available replacement options using a consumer choice model that derives market share based on the features of available representative lamps. This model includes consumer sensitivity to price, lifetime, energy savings, and mercury content as measured in a market study [10] of consumer preference for lamps. Though these parameters represent the preference of residential consumers, DOE adopted them for the linear lamp market in the absence of available alternatives. DOE expects that because these parameters place more weight on first-cost than other attributes, the model results in a conservative estimate of LED adoption since commercial and industrial consumers are more likely to weigh decreases in operating costs in purchasing decisions.

DOE assumes that the purchase price of TLED lamp options will drop over the course of the analysis period due to price learning associated to cumulative shipments of LED lamps of all types (consistent with the price learning analysis detailed in a Lawrence Berkeley National Laboratory report on the impact of the GSL backstop [11]). Further, DOE assumes that while consumers may replace fluorescent lamps with either a fluorescent or TLED lamp option, those with failing LEDs will only opt for an LED replacement. Lastly, DOE applies an efficiency trend, based on a fit to projections of linear fixture efficiency from the 2019 Solid State Lighting Report,[12] to the most efficient LEDs available. Over the course of the shipments projection period, the application of this trend expands the range of available LED efficiencies and attempts to account for increases in LED market share that would occur as a result of this shift. Due in part to these assumptions, the shipments model projects that the linear lamp market continues to shift quickly towards LED over the analysis period in the no-new-standards case. See chapter 7 of the final determination TSD for more details.

DOE also assumed that a fixed fraction of all tubular lamp stock in each year will leave the market due to retrofits or renovation with integrated LED fixtures. This assumption has the effect of reducing the number of lamps that might retire, and therefore the size of the market, in each year.

The only comment DOE received on the shipments analysis was from NEMA, referring DOE to the NEMA Lamp Index for GSFLs,[13] consistent with DOE's approach. (NEMA, No. 18 at p. 3)

F. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[14] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data estimated or provided from other sources. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of GSFLs sold from 2026 through 2055.

DOE evaluates the effects of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each GSFL class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of GSFLs with efficiencies greater than the standard and TLED substitutes using the consumer-choice model discussed previously.

The only potential standard for which NES and NPV were calculated was the max-tech levels, where the standard for each GSFL product class is set at the maximum available level. NES and NPV at this candidate standard define an upper bound on how much savings could be realized at any lower standard.

Because an LCC was not performed for consumers of lamps covered under this analysis, DOE estimated the per-unit annual energy use of available GSFL options based on system input power derived in the engineering analysis (described in section IV.B of this document) and separate average HOU estimates for individual sectors.

DOE derived LED alternatives to the T8 GSFL lamps represented in this analysis by looking at the efficiency and estimated cost of TLED lamps found in manufacturer catalogs and retailer websites (in order of data priority). DOE chose seven total TLED lamps ranging from 120 to 177 lm/W, and an estimated pre-tax price of $8.78 to $14.20 in 2021 USD. DOE assumed that the efficiency of T5 and 8-foot TLED lamps would be the same as LED T8 lamps, and estimated their wattage by assuming

[9] *https://www.nema.org/analytics/lamp-indices.*

[10] Steven Krull and Dan Freeman, ''Next Generation Light Bulb Optimization'' (Pacific Gas and Electric Company, February 10, 2012), *http://www.etcc-ca.com/sites/default/files/OLD/images/stories/Lighting_Conjoint_Study_v020712f.pdf.*

[11] C.L.S. Kantner et al., ''Impact of the EISA 2007 Backstop Requirement on General Service Lamps'' (Berkeley, CA: Lawrence Berkeley National Laboratory, December 2021), *https://eta.lbl.gov/publications/impact-eisa-2007-backstop-requirement.*

[12] Navigant Consulting, Inc., ''Energy Savings Forecast of Solid-State Lighting in General Illumination Applications'' (Washington, DC: U.S. Department of Energy, December 2019), *https://www.energy.gov/eere/ssl/downloads/2019-ssl-forecast-report.*

[13] See footnote 9.

[14] The NIA accounts for impacts in the 50 states and Washington, DC.

they would have the same lumen output of their GSFL competitors described in the engineering analysis. Like with the GSFLs, the annual energy use of TLED lamps was estimated using average hours of use and wattage. The price of any given T5 or 8-foot LED alternative is estimated as the sum of: (a) the cost of the least efficient GSFL option of that lamp type, and (b) the incremental cost between the least efficient T8 GSFL and the LED T8 with the same efficiency as the given lamp. See chapter 7 and chapter 8 of the final determination TSD for more details.

DOE uses a model written in the Python programming language to calculate the energy savings and the national consumer costs and savings from each EL.

Table IV.10 summarizes the inputs and methods DOE used for the NIA analysis for the final determination. Discussion of these inputs and methods follows the table. See chapter 8 of the final determination TSD for details.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2026.
Efficiency Trends	Consumer choice model, assuming increasing efficiency for max tech linear LED lamp option and decreasing LED prices over time.
Annual Energy Consumption per Unit	Energy consumption values of modeled representative lamps are a function of EL.
Total Installed Cost per Unit	Purchase price of modeled representative lamps.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	Energy Information Administration's Annual Energy Outlook (''AEO'') 2022 projections (to 2050) and extrapolation through 2095.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on AEO2022.
Discount Rate	3 percent and 7 percent.
Present Year	2022.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. DOE uses a shipments model that implements consumer choice over available lamp options in each year in order to compute the efficiency distribution. At each standard level and the no-new-standards case, the consumer choice model uses consumer sensitivity to price, relative energy savings, lamp lifetime, and mercury content to estimate the efficiency distribution of purchases in each year.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that Energy Information Administration's (EIA's) National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [15] that EIA uses to prepare its AEO. The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 8B of the final determination TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

DOE assumed that the price of TLED lamps would decrease over the analysis period due to price learning, as described in section IV.F, which affected the market share projected by the shipments model. The gradual decrease in LED prices also affects the total installed cost over the analysis period, and has the effect of reducing lamp costs in both the standards- and no-new-standards cases as well as the incremental cost of a standard.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average energy price changes in the Reference case from *AEO2022,*

[15] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/analysis/pdfpages/0581(2009)index.php* (last accessed December 1, 2022).

which has an end year of 2050. To estimate price trends after 2050, DOE assumed that prices would remain constant after 2050. NIA results based on these cases are presented in appendix 8C of the final determination TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final determination, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[16] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for GSFLs. It addresses the max tech levels examined by DOE and the projected impacts of these levels. Additional details regarding DOE's analyses are contained in the final determination TSD supporting this document.

A. Economic Impacts on Individual Consumers

Based on the lack of energy savings and declining shipments of GSFLs, as discussed in sections IV.C and IV.E of this final determination, DOE did not conduct LCC and PBP analyses to evaluate the economic impacts on individual consumers of amended GSFL energy conservation standards.

B. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for GSFLs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under the max-tech levels for 4-foot T8 and 4-foot standard and high output T5 GSFL product classes. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2026–2055).

The NIA model projected relatively low potential savings from a max-tech standard level and that the majority of savings realized by setting a GSFL standard are the result of incurring quicker market shift to LED alternatives, rather than the reduction in energy consumption of a constant GSFL market share. Further, because the entire tubular lamp market is projected to decline over the analysis period, most savings occur in the first decade of a potential standard. For more details, see chapters 7 and 8 of the final determination TSD.

Table V.1 presents DOE's projections of the NES for the max-tech standard level considered for GSFLs. The savings were calculated using the approach described in section IV.F of this document.

TABLE V.1—CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFLS (QUADS); 9 YEARS OF SHIPMENTS (2026–2034) AND 30 YEARS OF SHIPMENTS (2026–2055)

	Max tech savings	
	9 years shipments (2026–2034)	30 years shipments (2026–2055)
Source Energy	0.02	0.03
FFC Energy ..	0.02	0.03

OMB Circular A–4 [17] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this final determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[18] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to GSFLs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.1. The impacts are counted over the lifetime of GSFLs purchased in 2026–2034.

2. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the max-tech levels considered for GSFLs. In accordance with OMB's guidelines on regulatory analysis,[19] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.2, Cumulative Net Present Value of Consumer Benefits for GSFLs (billions of 2021 USD); 9 Years of Shipments (2026–2034) and 30 Years of Shipments (2026–2055), shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2026–2055.

[16] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed December 1, 2022).

[17] OMB. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed March 4, 2022).

[18] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[19] See footnote 17.

TABLE V.2—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR GSFLS (BILLIONS OF 2021 USD); 9 YEARS OF SHIPMENTS (2026–2034) AND 30 YEARS OF SHIPMENTS (2026–2055)

Discount rate	Maximum tech standard	
	9 years of shipments (2026–2034)	30 Years of Shipments (2026–2055)
3 percent	0.15	0.20
7 percent	0.11	0.14

The NPV results based on the aforementioned 9-year analytical period are also presented in Table V.2, Cumulative Net Present Value of Consumer Benefits for GSFLs (billions of 2021 USD); 9 Years of Shipments (2026–2034) and 30 Years of Shipments (2026–2055). The impacts are counted over the lifetime of GSFLs purchased in 2026–2034. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

C. Final Determination

In order to make a final determination that standards for GSFLs do not need to be amended, EPCA requires that DOE analyze whether amended standards for GSFLs would result in significant conservation of energy, be technologically feasible, and be cost effective. (42 U.S.C. 6295(m)(1)(A) and (n)(2)) Any new or amended standards issued by the Secretary would be required to comply with the economic justification requirements of 42 U.S.C. 6295(o). The criteria considered under 42 U.S.C. 6295(m)(1)(A) and the additional analysis relating to economic justification are discussed in this section V.C.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for GSFLs would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and (n)(2)(B)) DOE has determined that there are technology options that would improve the efficacy of GSFLs. These technology options are being used in commercially available GSFLs and therefore are technologically feasible. Hence, DOE has determined that amended energy conservation standards for GSFLs are technologically feasible.

2. Cost Effectiveness

EPCA requires DOE to consider whether energy conservation standards for GSFLs would be cost effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered GSFLs compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered GSFLs which are likely to result from the imposition of an amended standard. (42 U.S.C. 6295(m)(1)(A), (n)(2)(C), and (o)(2)(B)(i)(II)) In the absence of an LCC analysis, DOE considers NPV estimated by the NIA model to estimate the potential monetary benefits of amended standards for GSFLs. (See results in Table V.2.) As noted, the inputs for determining the NPV are: (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE observes that most of the estimated NPV resulting from a potential standard comes from operating cost savings associated to a slightly faster market transition to LED alternatives, rather than savings associated to lower energy consumption for GSFL consumers.

3. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for GSFLs would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and (n)(2)(A)) DOE observed that a max-tech FFC energy savings of 0.03 quads over 30 years of shipments represents an approximately 1 percent decrease in total energy use of lamps shipped in the period 2026–2055. In addition, the model used to estimate these savings projects that most of this reduction comes in incurring a faster market shift to solid state lighting rather than a reduction in energy use among existing GSFL consumers.

DOE also notes that GSFLs are manufactured and sold at standard wattage levels, which restricts the effect of efficiency gains to increasing the amount of light provided by GSFLs rather than directly reducing energy consumption. For 4-foot T8 GSFLs, which represent the bulk of GSFL shipments, the same wattage options are available at the max tech standard level as at the baseline, so no GSFL consumer must use less energy as a result of a standard. The 0.02 FFC quads of potential energy savings associated with these lamps is thus uncertain, as consumers may simply continue to purchase a GSFL of the same wattage as their current lamp, rather than shift to a lower wattage lamp or different lighting technology. Consumers who have not already transitioned to LED lighting, once the vast majority of the market has done so, may be less inclined to do so than the typical consumer modeled by the consumer-choice model.

The 8-foot RDC HO product class and the 8-foot SP slimline product class do not include any lamp options at higher ELs that would reduce energy compared to the baseline lamp, with the exception of one lamp option in the 8-foot SP slimline product class that doesn't offer the same utility as the other representative lamp options because its lumen output is more than 10 percent lower. Thus, there are no potential energy savings from more efficient GSFLs for the 8-foot product classes.

The potential FFC energy savings from the remaining (4-foot T5 standard output and high output) product classes is only 0.01 quads over 30 years of shipments. While these product classes do offer a lower wattage option at max tech, in addition to an option with the same wattage as the baseline lamp, DOE notes that for standard output T5 lamps, the lower wattage lamp costs more than the baseline-equivalent wattage option, and for the high output T5 lamps, the lower wattage lamp costs similar to the baseline-equivalent option, again suggesting uncertainty that consumers will switch to a lower wattage lamp. Additionally, most potential energy savings would come from consumers switching to LEDs, and as with 4-foot T8 GSFLs, there is no guarantee that consumers will switch to LEDs as a result of a standard, rather than continue to purchase GSFLs of the same wattage as their current lamp.

Further, while consumers historically might save energy under a standard by retrofitting their systems with lower ballast factor ballasts to reduce the operating wattage of their lamps (while retaining light output), it appears unlikely in the current market that consumers would retrofit their ballasts in this way as opposed to installing a solid-state lighting solution. This removes the potential lamp-and-ballast replacement approach as a strategy to save energy, and consequently this approach was not modeled in this analysis of potential energy savings.

4. Further Considerations

As discussed previously, any amended standards for GSFLs would be required to comply with the economic justification and other requirements of 42 U.S.C. 6295(o). Based on the: (1) uncertainty of potential energy savings discussed in detail in section V.C.3 of this document; (2) the fact that an amended standard for GSFLs would require manufacturers to invest in the

manufacture of more efficient GSFLs at a time when the market is already rapidly declining, as discussed in section IV.F; and (3) international uncertainty regarding the ability to sell GSFLs in the future following the second segment of the fourth meeting of the Conference of the Parties to the Minamata Convention on Mercury,[20] DOE has determined that energy conservation standards for GSFLs would not be economically justified.

5. Summary

Based on the reasons stated in the foregoing discussion, DOE determines that the energy conservation standards for GSFLs do not need to be amended because amended standards would not be economically justified.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for GSFLs, the determination will not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the final determination will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which concludes that no amended energy conservation standards for GSFLs are needed, imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this final action in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE has determined that this final determination qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the National

[20] clasp, ''Convention on Mercury Promises CFLs Phase-Out; Action on LFLs Delayed,'' available at *https://www.clasp.ngo/updates/convention-on-mercury-agrees-to-phase-out-major-category-of-fluorescent-light-bulbs-but-last-minute-interventions-delay-action-on-another/*; UN Environment Programme, ''Minamata COP–4 closes with global commitment to strengthen efforts against toxic mercury,'' available at *https://www.unep.org/news-and-stories/press-release/minamata-cop-4-closes-global-commitment-strengthen-efforts-against;* UN Environment Programme, ''Minamata Convention on Mercury,'' available at *https://www.mercuryconvention.org/en.*

Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the GSFLs that are the subject of this final determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this final determination according to UMRA and its statement of policy and determined that the final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor E.O.; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination, which does not amend energy conservation standards for GSFLs, is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''),

issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared Peer Review report pertaining to the energy conservation standards rulemaking analyses.[21] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[22]

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. The report will state that it has been determined that the final determination is not a ''major rule'' as defined by 5 U.S.C. 804(2).

[21] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007. Available at *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed Nov. 7, 2022).

[22] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Signing Authority

This document of the Department of Energy was signed on January 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 7, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–02863 Filed 2–10–23; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0035]

RIN 1904–AE66

Energy Conservation Program: Energy Conservation Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including Packaged Terminal Air Conditioners (''PTACs'') and Packaged Terminal Heat Pumps (''PTHPs''). EPCA also requires the U.S. Department of Energy (''DOE'') to periodically review standards. In this final determination, DOE has determined that it lacks clear and convincing evidence that more-stringent standards for PTACs and PTHPs would be economically justified. As such, DOE has determined that energy conservation standards for PTACs and PHTPs do not need to be amended.

DATES: The effective date of this determination is March 15, 2023.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-STD-0035.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Determination

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA,[3] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes PTACs and PTHPs, the subject of this rulemaking.

For this determination, DOE analyzed PTACs and PTHPs subject to standards specified in Code of Federal Regulations (''CFR'') at 10 CFR 431.97. DOE first analyzed the technological feasibility of more energy efficient PTACs and PTHPs. For those PTACs and PTHPs for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (''NIA''). DOE also considered whether potential energy conservation standards would be economically justified. As discussed in the following sections, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards for PTACs and PTHPs would be economically justified. DOE evaluated whether higher standards would be cost effective by conducting life-cycle cost (''LCC'') and payback period (''PBP'') analyses and estimated the net present value (''NPV'') of the total costs and benefits experienced by consumers.

Based on the results of the analyses, summarized in section V of this document, DOE has determined that it lacks clear and convincing evidence that more stringent standards would result in significant additional energy savings and be technologically feasible and economically justified.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as some of the historical background relevant to the establishment of standards for PTACs and PTHPs.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes PTACs and PTHPs, the subject of this document. (42 U.S.C. 6311(1)(I)) EPCA prescribed initial standards for this equipment. (42 U.S.C. 6313(a)(3))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(b); 42 U.S.C. 6297(a)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(b)(2)(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296(a), (b), and (d)).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314(a)(2)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the

efficiency of that equipment (42 U.S.C. 6314(d)) Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. The DOE test procedures for PTACs and PTHPs appear at 10 CFR 431.96(g).

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1 (''ASHRAE Standard 90.1''), ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ''ASHRAE equipment''). For each type of listed equipment, EPCA directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under EPCA, DOE must also review energy efficiency standards for PTACs and PTHPs every six years and either: (1) issue a notice of determination that the standards do not need to be amended as adoption of a more stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking (''NOPR'') including new proposed standards based on certain criteria and procedures in subparagraph (B). (42 U.S.C. 6313(a)(6)(C))

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or (a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected quantity of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa))

EPCA further provides that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II)) A determination that amended energy conservation standards are not needed must be based on the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(A)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii))

DOE is publishing this final determination in satisfaction of the 6-year review requirement in EPCA, having determined that DOE lacks clear and convincing evidence that amended standards for PTACs and PTHPs would be economically justified.

B. Background

1. Current Standards

In a final rule published on July 21, 2015 (''July 2015 final rule''), DOE prescribed the current energy conservation standards for PTACs and PTHPs. 80 FR 43162. These levels are expressed in energy efficiency ratio (''EER'') for the cooling mode for PTACs and PTHPs and in coefficient of performance (''COP'') for the heating mode for PTHPs. 10 CFR 431.97(c). EER is defined as the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in British thermal units (''Btu'')/watt-hour. 10 CFR 431.92. COP is defined as the ratio of the produced cooling effect of an air conditioner or heat pump (or its produced heating effect, depending on the mode of operation) to its net work input, when both the cooling (or heating) effect and the net work input are expressed in identical units of measurement. 10 CFR 431.92.

The current energy conservation standards are located at 10 CFR 431.97, Tables 7 and 8, and repeated in Table II–1.

TABLE II–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class			Efficiency level *	Compliance date: products manufactured on or after
Equipment type	Category	Cooling capacity (British thermal units per hour (''Btu/h'')		
PTAC	Standard Size **	<7,000 Btu/h	EER = 11.9	January 1, 2017.
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 14.0 − (0.300 × Cap ††)	January 1, 2017.
		>15,000 Btu/h	EER = 9.5	January 1, 2017.
	Non-Standard Size †	<7,000 Btu/h	EER = 9.4	October 7, 2010.

TABLE II–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS—Continued

Equipment class			Efficiency level *	Compliance date: products manufactured on or after
Equipment type	Category	Cooling capacity (British thermal units per hour (''Btu/h'')		
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.9 − (0.213 × Cap ††)	October 7, 2010.
		>15,000 Btu/h	EER = 7.7	October 7, 2010.
PTHP	Standard Size **	<7,000 Btu/h	EER = 11.9 COP = 3.3.	October 8, 2012.
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 14.0 − (0.300 × Cap ††) COP = 3.7 − (0.052 × Cap ††).	October 8, 2012.
		>15,000 Btu/h	EER = 9.5 COP = 2.9.	October 8, 2012.
	Non-Standard Size †	<7,000 Btu/h	EER = 9.3 COP = 2.7.	October 7, 2010.
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.8 − (0.213 × Cap ††) COP = 2.9 − (0.026 × Cap ††).	October 7, 2010.
		>15,000 Btu/h	EER = 7.6 COP = 2.5.	October 7, 2010.

* For equipment rated according to the DOE test procedure prescribed at 10 CFR 431.96(g).
** Standard size means a PTAC or PTHP with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches. 10 CFR 431.92.
† Non-standard size means a PTAC or PTHP with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches. *Id.*
†† Cap means cooling capacity in thousand Btu/h at 95° F outdoor dry-bulb temperature.

2. History of Standards Rulemakings for PTACs and PTHPs

In the July 2015 final rule, DOE published amendments to the PTAC and PTHP standards in response to the 2013 update to ASHRAE Standard 90.1 (''ASHRAE Standard 90.1–2013''). 80 FR 43162. DOE determined that ASHRAE Standard 90.1–2013 amended the standards for three of the 12 PTAC and PTHP equipment classes: PTAC standard size less than 7,000 Btu/h, PTAC standard size greater than or equal 7,000 Btu/h and less than or equal to 15,000 Btu/h, and PTAC standard size greater than 15,000 Btu/h. 80 FR 43162, 43163. DOE adopted the standard levels for these three equipment classes as updated by ASHRAE Standard 90.1–2013, with compliance with the amended standards required for equipment manufactured on or after January 1, 2017. *Id.* DOE did not amend the energy conservation standards for the remaining nine equipment classes, which were already aligned with the standards in ASHRAE Standard 90.1–2013. 80 FR 43162, 43166. DOE was unable to show with clear and convincing evidence that energy conservation standards at levels more stringent than the minimum levels specified in the ASHRAE Standard 90.1–2013 for any of the 12 equipment classes would be economically justified. 80 FR 43162, 43163.

Since ASHRAE Standard 90.1–2013 was published, ASHRAE Standard 90.1 has undergone three further revisions. A revision was published on October 26, 2016 (''ASHRAE Standard 90.1–2016'') and a revision was published on October 24, 2019 (''ASHRAE Standard 90.1–2019''). The most recent revision was published in January, 2023 (''ASHRAE Standard 90.1–2022''). None of these publications amended the minimum EER and COP levels for PTACs and PTHPs.

In support of the present review of the PTACs and PTHPs energy conservation standards, DOE published an early assessment review request for information (''RFI'') on December 21, 2020 (''December 2020 ECS RFI''), which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 85 FR 82952.

Subsequently, on June 24, 2022, DOE published a notice of proposed determination (''NOPD'') where DOE tentatively determined that it lacks clear and convincing evidence that more-stringent standards for PTACs and PTHPs would result in significant additional energy savings and be technologically feasible and economically justified (''June 2022 NOPD''). 87 FR 37934.

DOE received comments in response to the June 2022 NOPD from the interested parties listed in Table II–2. These comments are discussed in detail in section IV of this document.

TABLE II–2—JUNE 2022 NOPD WRITTEN COMMENTS

Commenter(s)	Reference in this final determination	Commenter No.	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	21	Trade Association.
Northwest Energy Efficiency Alliance, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project.	Joint Advocates	20	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison.	CA IOUs	19	Utilities.
New York State Energy Research and Development Authority	NYSERDA	18	Efficiency Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

III. General Discussion

DOE developed this final determination after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Equipment Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. This determination covers PTACs and PTHPs.

PTAC is defined as a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is industrial equipment. 10 CFR 431.92. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity. *Id.*

PTHP is defined as a PTAC that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is industrial equipment. *Id.*

The scope of coverage is discussed in further detail in section IV.A.1 of this document. The PTAC and PTHP classes for this determination are discussed in further detail in section IV.A.2 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. (42 U.S.C. 6314(d)) As discussed, DOE's current energy conservation standards for PTACs and PTHPs are expressed in terms of EER and COP. 10 CFR 431.97.

DOE's current test procedures for PTACs and PTHPs were last updated in a test procedure final rule on June 30, 2015 (''June 2015 TP final rule''). 80 FR 37136. The current test procedure for cooling mode incorporates by reference AHRI Standard 310/380–2014, ''Standard for Packaged Terminal Air-Conditioners and Heat Pumps'' (''AHRI Standard 310/380–2014'') with the following sections applicable to the DOE test procedure: sections 3, 4.1, 4.2, 4.3, and 4.4; American National Standards Institute (''ANSI'')/ASHRAE 16–1983 (RA 2014), ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners'' (''ANSI/ASHRAE Standard 16–1983'') and ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE Standard 37–2009''). 10 CFR 431.96(g)(1). The current test procedure for heating mode testing incorporates by reference AHRI Standard 310/380–2014, with the following sections applicable to the DOE test procedure: sections 3, 4.1, 4.2 (except the section 4.2.1.2(b) reference to ANSI/ASHRAE 37), 4.3, and 4.4; and ANSI/ASHRAE Standard 58–1986 (RA 2014), ''Method of Testing for Rating Room Air-Conditioner and Packaged Terminal Air-Conditioner Heating Capacity'' (''ANSI/ASHRAE Standard 58–1986''). 10 CFR 431.96(g)(2). The currently applicable DOE test procedures for PTACs and PTHPs appear at 10 CFR 431.96 (g).

The current test procedures also include additional provisions in paragraphs (c) and (e) of 10 CFR 431.96. 10 CFR 431.96(b)(1). Paragraph (c) of 10 CFR 431.96 specifies provisions for an optional compressor break-in period, and paragraph (e) of 10 CFR 431.96 details what information sources can be used for unit set-up and provides specific set-up instructions for refrigerant parameters (*e.g.,* superheat) and air flow rate.[5]

DOE's current test procedure for PTACs and PTHPs do not include a seasonal metric that includes part-load performance. As part of an ongoing test procedure rulemaking, DOE published a RFI on May 25, 2021 (''May 2021 TP RFI''), in which DOE requested information and data to consider amendments to DOE's test procedure for PTACs and PTHPs. 86 FR 28005. Specifically, DOE requested comment on whether it should consider adopting for PTACs and PTHPs a cooling-mode metric and a heating-mode metric that integrates part-load performance to better represent full-season efficiency. 86 FR 28005, 28010–28011. Were DOE to amend the PTAC and PTHP test procedure to incorporate a part-load metric, any analysis for future standards rulemakings would be based on the amended test procedure.

DOE received general comments related to the test procedure in response to the June 2022 NOPD. AHRI recommended that DOE incorporate by reference AHRI Standard 310/280–2017 without modifications as it includes provisions currently prescribed in 10 CFR 431.96, while also including alternative energy determination method (AEDM) requirements, instructions on refrigerant charge, standard rating requirements for non-US and non-Canada climate regions, and ASHRAE 58 as the only permissible standard to use as the heat rating test method. (AHRI, No. 21 at p. 2–3) AHRI noted that the AHRI Standard 310/380 committee recently met to consider the development of test procedures for variable speed operation, low temperature operation, and a test procedure for determining the energy consumption associated with the dehumidification function of make-up air PTACs/PTHPs as part of the revision effort. *Id.* AHRI noted that DOE has a representative on this committee and encouraged DOE's involvement in the review process. *Id.*

NYSERDA asserted that current PTHP standards do not sufficiently address low temperature ambient conditions in equipment classes and test procedures. (NYSERDA No. 18 at p. 1–2) NYSERDA stated the current PTHP heating performance metric does not adequately represent a PTHP's average use cycle during the heating season, and strongly urged the DOE prioritize this element in the next round of test procedure and standards updates. *Id.* NYSERDA highlighted their anticipation for increasing demand for heat pump solutions with decarbonization policies being implemented and requested future test procedures be more representative of New York's climate zones 4A, 5A, and 6A as well as cold climates in general. *Id.*

The CA IOUs asserted that the current PTAC and PTHP test procedures can be significantly improved and commented that they are currently testing PTACs and PTHPs and expect to provide DOE and stakeholders with data on several test procedure topics, including energy consumption at part-load conditions, heating performance at temperatures

[4] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2019–BT–STD–0035, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[5] The amendatory instructions in the June 2015 TP final rule for PTACs and PTHPs includes the reference to AHRI Standard 310/380–2014 in paragraphs (c) and (e), indicating that the requirements do apply to this equipment, even though the current CFR does not include this reference. 80 FR 37136, 37149 (June 30, 2015).

lower than current standard heating mode rating conditions, and energy consumption associated with the delivery of conditioned make-up air. (CA IOUs, No. 19 at p. 1) The CA IOUs suggested that this data will be helpful when considering test procedure revisions. *Id.*

Joint Advocates commented that an improved test procedure could uncover opportunities for significant cost-effective energy savings and encouraged DOE to update the test procedure to include a part-load cooling metric and a heating metric that includes performance at low ambient temperatures. (Joint Advocates, No. 20 at p. 1)

DOE will consider these comments in the ongoing test procedure rulemaking. Discussion of part-load technologies as they relate to standards is contained in section IV.A.3 of this document.

For the purpose of this final determination, DOE relied on the test procedures for PTACs and PTHPs as currently established at 10 CFR 431.96(g), which does not include part-load metrics.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. These technology options are discussed in detail in section IV.B.3 of this document. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. See generally 10 CFR 431.4; sections 6(b)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430 subpart C (''appendix A'').

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. See generally 10 CFR 431.4; sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of appendix A. Section IV.B.4 of this document discusses the results of the screening analysis for PTACs and PTHPs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this final determination. For further details on the screening analysis for this final determination, see section IV.B.4 of this document.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered equipment more stringent than the level in ASHRAE 90.1, the Department must conduct the requisite analyses to show by clear and convincing evidence that such standard would result in significant additional conservation of energy and would be technologically feasible and economically justified. Under such analysis, DOE determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (*See* 42 U.S.C. 6313(a)(6)(A)(ii)(II)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for PTACs and PTHPs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.C.4 of this final determination.

D. Energy Savings

1. Determination of Savings

For each efficiency level (''EL'') evaluated, DOE projected energy savings from application of the EL to the PTACs and PTHPs purchased in the 30-year period that begins in the assumed year of compliance with the potential standards (2026–2055). The savings are measured over the entire lifetime of the PTACs and PTHPs purchased in the aforementioned 30-year period. DOE quantified the energy savings attributable to each EL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impacts analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended standards for PTACs and PTHPs. The NIA spreadsheet model (described in section V.B of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (''FFC'') energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[6] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy.[7] (42 U.S.C. 6313(a)(6)(C)(i)(I)); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[8] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC

[6] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[7] In setting a more stringent standard for ASHRAE equipment, DOE must have ''clear and convincing evidence'' that doing so ''would result in significant additional conservation of energy'' in addition to being technologically feasible and economically justified. 42 U.S.C. 6313(a)(6)(A)(ii)(II). This language indicates that Congress had intended for DOE to ensure that, in addition to the savings from the ASHRAE standards, DOE's standards would yield additional energy savings that are significant. In DOE's view, this statutory provision shares the requirement with the statutory provision applicable to covered products and non-ASHRAE equipment that ''significant conservation of energy'' must be present (42 U.S.C. 6295(o)(3)(B))—and supported with ''clear and convincing evidence''—to permit DOE to set a more stringent requirement than ASHRAE.

[8] *See* 86 FR 70892, 70901 (Dec. 13, 2021).

national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

E. Economic Justification

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this final determination.

1. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturing impact analysis (''MIA''). DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) industry net present value, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. However, DOE is not amending standards for PTACs and PTHPs, and, therefore, this final determination would have no cash-flow impacts on manufacturers. Accordingly, as discussed further in section IV.H of this document, DOE did not conduct an MIA for this final determination.

For individual consumers, measures of economic impact include the changes in LCC and payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value (''NPV'') of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard. However, DOE is not amending standards for PTACs and PTHPs, and, therefore, this final determination would have no disproportionate impact on identifiable subgroups of consumers. Accordingly, DOE did not conduct a subgroup analysis for this final determination.

2. Savings in Operating Costs Compared to Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

3. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet models to project national energy savings.

4. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6313(a)(6)(B)(ii)(IV)) DOE is not amending standards for PTACs and PTHPs, and, therefore, this final determination would not impact the utility of such equipment.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a standard. (42 U.S.C. 6313(a)(6)(B)(ii)(V)) Because DOE is not amending standards for PTACs and PTHPs, DOE did not transmit a copy of its final determination to the Attorney General for anti-competitive review.

6. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(VI)) The energy savings from the standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity. However, DOE is not amending standards for PTACs and PTHPs, and therefore, did not conduct this analysis.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how standards may affect these emissions. DOE also estimates the economic value of emissions reductions resulting from each trial standard level (''TSL'') (*i.e.,* standards case above the base case).[9]

[9] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal Government's emergency motion for stay pending

However, DOE is not amending standards for PTACs and PTHPs, and, therefore, did not conduct this analysis.

7. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this final determination with regard to PTACs and PTHPs. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential energy conservation standards. The NIA uses a second spreadsheet set that provides shipments projections and calculates NES and net present value of total consumer costs and savings expected to result from potential energy conservation standards. These spreadsheet tools are available on the website for this rulemaking: *www.regulations.gov/docket/EERE–2019–BT–STD–0035.*

A. Comments Received on the Proposed Determination

The CA IOUs supported the DOE analysis presented in the NOPD and agreed with DOE's determination that it lacks evidence that more stringent standards for PTAC and PTHP equipment would be technologically or economically justified. (CA IOUs, No. 19 at p. 1) NYSERDA also acknowledged that based on current information, DOE has insufficient information to update the standards for PTAC and PTHP equipment, but strongly encouraged DOE to include cold climate performance into the next rulemaking. (NYSERDA, No. 18 at p. 1)

The Joint Advocates encouraged DOE to establish energy conservation standards for PTACs and PTHPs based on a part-load cooling performance metric and a heating metric that incorporates low temperature performance as soon as possible. Additionally, the Joint Advocates commented that they understand that DOE's proposed determination satisfies the EPCA 6-year lookback requirement, but noted that should DOE issue a final determination not to amend standards, DOE would be required to publish another NOPD or notice of proposed rulemaking within three years of the publication of the determination. (Joint Advocates, No. 20 at p. 1)

In response to NEEA and Joint Advocates respective suggestions of including cold climate performance and part-load cooling and heating performance in the next rulemaking, DOE notes that the current test procedure does not account for cold climate performance or part-load cooling and heating performance. At present, DOE is unable to consider energy savings from a part-load metric or low temperature heating performance. DOE will consider these comments in the ongoing test procedure rulemaking. If DOE amends the PTAC and PTHP test procedure to incorporate these changes, DOE will conduct an analysis for future standards rulemakings, if any, based on the amended test procedure. DOE concurs with the Joint Advocates that DOE would be required to publish another NOPD or NOPR within three years of the publication of this determination.

AHRI agreed with DOE's assessment that DOE lacked clear and convincing evidence that more-stringent standards for PTACs and PTHPs would be economically justified noting that the PTAC/PTHP efficiency levels remain unchanged from ASHRAE 90.1–2013. AHRI stated agreement with DOE's still codified belief, ''that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place.'' AHRI urged DOE to apply this same statutorily mandated process to the PTAC/PTHP test procedure and rulemaking sequencing. (AHRI, No. 21 at p. 1–2) AHRI commented that DOE did not follow the process specific to ASHRAE equipment, which, AHRI asserted, requires that within 18 months (plus 180 days) of publication of ASHRAE Standard 90.1, DOE is required to consider amending the existing test procedures when ASHRAE Standard 90.1 is amended with respect to test procedures. *Id.* AHRI stated that DOE has ignored these provisions and has not provided any explanation regarding either the deviation from the correct sequencing of rulemakings, or the disregard of the promulgation. AHRI urged DOE to adopt AHRI 310/380–2017, which is the standard cited in ASHRAE Standard 90.1, asserting that this test procedure has been deemed representative in past rulemakings, including in the analysis underpinning this energy conservation standard. AHRI additionally stated that no manufacturer has submitted a waiver to modify the current test procedure, which indicates that the results of the existing test procedure remain representative of actual energy use or efficiency, and that all products defined as PTACs and PTHPs are able to be tested in accordance with AHRI 310/380. AHRI asserted that DOE's failure to abide by its own regulations by timely adopting the ASHRAE 90.1–2019 testing standards disingenuously triggered the Department's 7-year lookback test procedure review. (AHRI, No. 21 at p. 3)

In response to AHRI's comment, DOE must first correct a fundamental misunderstanding of the 7-yr lookback process reflected in AHRI's comment that DOE ''disingenuously'' triggered this process. AHRI seems to be under the mistaken impression that DOE can only review a test procedure once every 7 years. DOE would direct AHRI to the statutory provision in EPCA regarding the 7-yr lookback for test procedures, which states that ''[a]t least once every 7 years'' DOE shall evaluate the test procedure for each class of covered equipment. (42 U.S.C. 6314(a)(1)) This language clearly allows for multiple reviews within a 7-yr period. As a result, there is simply no need for DOE to wait 7 years to conduct a review under this process. As such, AHRI's assertion that DOE ''disingenuously'' initiated a review under 42 U.S.C. 6314(a)(1) is entirely without merit.

Additionally, DOE acknowledges that appendix A currently contains language that ''ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that existing standard remain in place.'' 10 CFR part 430, subpart C, appendix A, section 9(c). But DOE notes that this statement does not have any effect on DOE's rulemaking obligations under the ASHRAE provision in EPCA. These provisions require DOE to: (1) initiate rulemakings when the relevant industry standard or test procedure has been amended (*see* 42 U.S.C. 6313(a)(6)(A) and 42 U.S.C.

appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal Government's appeal of that injunction or a further court order. The preliminary injunction enjoined the Federal Government from relying on the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits in accordance with applicable Executive orders.

6314(a)(4)(B)); and (2) periodically review standards and test procedures for ASHRAE equipment (*see* 42 U.S.C. 6313(a)(6)(C) and 42 U.S.C. 6314(a)(1)(A)). Neither of these situations would be affected by a decision by ASHRAE to reaffirm an existing standard. As such, DOE notes that is has proposed to remove this statement in a NOPR proposing updates to appendix A. 86 FR 35668, 35676.

DOE would also like to clarify the timelines associated with promulgating rulemaking documents. For energy conservation standards, EPCA provides that no later than 18 months after the publication of an amended version of ASHRAE/IES Standard, 90.1, DOE will establish an amended standard at the level specified by ASHRAE. 42 U.S.C. 6313(a)(6)(A) Conversely, for test procedures, EPCA does not provide an 18-month window for adopting an amended ASHRAE test procedure. *See* 42 U.S.C. 6314(a)(4). DOE notes that the Process Rule erroneously applies EPCA's timelines for energy conservation standards for ASHRAE equipment to test procedures. 86 FR 35668, 35676; see also 10 CFR part 430, subpart C, appendix A, section 9(a). Given this error and DOE's proposal to address the error, DOE is following the statutory requirements in EPCA.

Regarding the adoption of AHRI 310/380–2017, DOE notes that DOE's current test procedure for PTACs and PTHPs incorporates by reference AHRI 310/380–2014. The current test procedures also include additional provisions in paragraphs (c) and (e) of 10 CFR 431.96. 10 CFR 431.96(b)(1). As noted in an early assessment RFI published on December 7, 2020, AHRI 310/380–2017 and AHRI 310/380–2014 differ only in that AHRI 310/380–2017 incorporates DOE's additional PTAC and PTHP test procedure specifications listed above. *See* 85 FR 78967, 78969. EPCA states that if the AHRI or ASHRAE industry standard is updated, DOE will amend the test procedure for the product as necessary to be consistent with the amended industry test procedure. (42 U.S.C. 6314 (a)(4)(B)) As the DOE test procedures for PTACs and PTHPs were already consistent with AHRI 310/380–2017, DOE did not see any need for action arising from the publication of ASHRAE 90.1–2019. Therefore, DOE proceeded with the test procedure rulemaking under the 7-year lookback review and has not deviated from process as asserted by AHRI. Because AHRI 310/380–2017 has not been officially incorporated in the DOE test procedures for PTACs and PTHPs, DOE has not an explicit determined in any past rulemaking whether the standard is representative or not. Furthermore, DOE corrects AHRI that the analysis underpinning this energy conservation standard determination is based on the current DOE test procedures, which incorporate AHRI 310/380–2014.

Comments pertaining to the technology and screening analysis are presented in sections IV.B.3and IV.B.4 of this document. DOE did not receive any further comments regarding its proposed determination in the June 2022 NOPD. Therefore, in this final determination, DOE relies on the analysis presented in the June 2022 NOPD and as summarized in sections IV.B to IV.H of this document.

B. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this final determination include: (1) a determination of the scope of the rulemaking and classes, (2) market and industry trends and (3) technologies or design options that could improve the energy efficiency of PTAC and PTHPs. The key findings of DOE's market assessment are summarized in the following sections. See the supplemental file DOE made available for comment (Document ID No. EERE–2019–BT–STD–0035–0001) for a review of the current PTAC and PTHP market and efficiency distributions.

1. Scope of Coverage

In this analysis, DOE relied on the definition of PTACs and PTHPs in 10 CFR 431.92. Any equipment meeting the definition of PTAC or PTHP is included in DOE's scope of coverage.

PTAC is defined as a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is industrial equipment. 10 CFR 431.92. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity. *Id.*

PTHP is defined as a PTAC that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is industrial equipment. *Id.*

On October 7, 2008, DOE published a final rule (''October 2008 final rule'') amending the energy conservation standards for PTACs and PTHPs in which DOE divided equipment classes based on whether a PTAC or PTHP is a standard size or non-standard size. 73 FR 58772, 58783.

DOE defines ''standard size'' as a PTAC or PTHP with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches. 10 CFR 431.92.

DOE defines ''non-standard size'' as a PTAC or PTHP with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches. *Id.*

2. Equipment Classes

For PTACs and PTHPs, the current energy conservation standards specified in 10 CFR 431.97(c) are based on 12 equipment classes determined according to the following: whether the equipment is an air conditioner or a heat pump, whether the equipment is standard size or non-standard size, and the cooling capacity in Btu/h. Table IV–1 lists the current 12 equipment classes for PTACs and PTHPs specified in Tables 7 and 8 to 10 CFR 431.97.

TABLE IV–1—CURRENT PTAC AND PTHP EQUIPMENT CLASSES

Equipment Class			
1	PTAC	Standard Size	<7,000 Btu/h.
2	PTAC	Standard Size	≥7,000 Btu/h and ≤15,000 Btu/h.
3	PTAC	Standard Size	>15,000 Btu/h.
4	PTAC	Non-Standard Size	<7,000 Btu/h.
5	PTAC	Non-Standard Size	≥7,000 Btu/h and ≤15,000 Btu/h.

TABLE IV–1—CURRENT PTAC AND PTHP EQUIPMENT CLASSES—Continued

6	PTAC	Non-Standard Size	>15,000 Btu/h.
7	PTHP	Standard Size	<7,000 Btu/h.
8	PTHP	Standard Size	≥7,000 Btu/h and ≤15,000 Btu/h.
9*	PTHP	Standard Size	>15,000 Btu/h.
10	PTHP	Non-Standard Size	<7,000 Btu/h.
11	PTHP	Non-Standard Size	≥7,000 Btu/h and ≤15,000 Btu/h.
12	PTHP	Non-Standard Size	>15,000 Btu/h.

* Based on DOE's review of equipment currently available on the market, DOE did not identify any Standard Size PTHP models with a cooling capacity greater than 15,000 Btu/h.

a. Make-Up Air PTACs and PTHPs

In the May 2021 TP RFI, DOE described ''make-up air'' PTACs and their additional function of dehumidification. *See* 86 FR 28005, 28007–28009. These PTAC and PTHP models are designed to draw outdoor air into the unit, dehumidify the outdoor air, and introduce the dehumidified air into the conditioned space. *Id.* As discussed in section II.B.1, for PTACs and PTHPs, DOE currently specifies EER as the test metric for cooling efficiency and COP as the metric for heating efficiency. Neither the current test procedure, at 10 CFR 431.96(g), nor the industry test procedure incorporated by reference, AHRI Standard 310/380–2014, account for the energy associated with the conditioning of make-up air introduced by the unit.

DOE is cognizant of the potential testing challenges associated with the testing of make-up air PTACs and PTHPs and is considering several issues pertaining to this testing in the ongoing test procedure rulemaking. *See* 86 FR 28005, 28008–28009. Were DOE to amend the PTAC and PTHP test procedure to incorporate measurement of dehumidification energy for make-up air PTACs and PTHPs, a separate equipment class for this type of units may be warranted. At such time, DOE would conduct the analysis for future standards rulemakings, if any, based on the amended test procedure. However, DOE will not establish separate equipment classes for make-up air PTACs and PTHPs at this time.

3. Technology Options

In the June 2022 NOPD, DOE considered the technology options shown in Table IV–2, which included options suggested by stakeholders in response the December 2020 ECS RFI. *See* 87 FR 37934, 37943–37944.

TABLE IV–2—POTENTIAL TECHNOLOGY OPTIONS FOR IMPROVING ENERGY EFFICIENCY OF PTACS AND PTHPS

Technology options	Source
Heat Exchanger Improvements:	
Increased Heat Exchanger Area	July 2015 final rule.
Microchannel Heat Exchangers	Screened out of July 2015 final rule; Suggested for Inclusion by Commenter.
Indoor Blower and Outdoor Fan Improvements:	
Higher Efficiency Fan Motors	July 2015 final rule.
Improved Air Flow and Fan Design (including more Efficient Fan Geometries)	July 2015 final rule.
Variable speed condenser fan/motor	New Technology Option.
Variable speed indoor blower/motor	New Technology Option.
Separate indoor and outdoor motors (to improve efficiency while reducing noise)	New Technology Option Suggested by Commenter.
Compressor Improvements:	
Higher Efficiency Compressors	July 2015 final rule.
Scroll Compressors	Screened out of July 2015 final rule.
Variable Speed Compressors	July 2015 final rule.*
Other Improvements:	
Heat Pipes	Screened out of July 2015 final rule.
Alternative Refrigerants	Screened out of July 2015 final rule.
EEV	New Technology Option.
TEV	July 2015 final rule.*
Intake and Exhaust Ducts (to reduce infiltration through and around the unit)	New Technology Option Suggested by Commenter.
Defrost Control Strategies & Demand-based Defrost Controls (for improved low ambient heating).	New Technology Option Suggested by Commenters.
Electric resistance boost control strategies (to limit the use of electric resistance boost).	New Technology Option Suggested by Commenter.
Compressor cut out control strategies (to allow compressor operation at lower temperatures).	New Technology Option Suggested by Commenter.

* Identified technology was not analyzed in the July 2015 final rule because of no full-load benefit.[10]

NYSERDA commented that they supported the inclusion of technology options that sought to address cold climate performance, including compressor cut out control strategies and defrost control strategies. (NYSERDA No. 18 at p. 2) Additionally, NYSERDA highlighted that heating performance at 5 °F was being promoted in the Northeast; citing the Northeast Energy Efficiency Partnership's (NEEP) Cold Climate Heat Pump list, which includes packaged terminal products capable of demonstrating high performance down to 5 °F. *Id.* NYSERDA encouraged DOE to prioritize development of a single metric that captures at the very least heating

[10] Detailed descriptions of the technology options from the July 2015 final rule can be found in chapters 3 and 4 of the July 2015 final rule technical support document (''TSD'') available at *www.regulations.gov/document/EERE-2012-BT-STD-0029-0040.*

performance at 47 °F and 17 °F, and further encouraged DOE to include an optional tests at 5 °F and the lowest catalogued outdoor dry bulb temperature. *Id.*

As discussed, DOE will consider NYSERDA's comments regarding the development of the heating metric in the ongoing test procedure rulemaking.

4. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

See 10 CFR part 430, subpart C, appendix A, sections 6(c)(3) and 7(b). In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis

a. Screened-Out Technologies

In the June 2022 NOPD, DOE screened out three technology options based on the applicable criteria discussed previously. *See* 87 FR 37934, 37945–37946. The screened-out technology options are presented below in Table IV–3.

TABLE IV–3—SCREENED OUT TECHNOLOGY OPTIONS IN THE JUNE 2022 NOPD

Screened technology option	Screening criteria (X = basis for screening out)				
	Technological feasibility	Practicability to manufacture, install, and service	Adverse impact on equipment utility	Adverse impacts on health and safety	Unique-pathway proprietary technologies
Scroll Compressors	X				
Heat Pipes	X				
Alternative Refrigerants	X				

In regard to alternate refrigerants, the Joint Advocates encouraged DOE to conduct testing and research on the impact alternative refrigerants can have with PTAC and PTHP equipment for future standards rulemaking. Additionally, the Joint Advocates encouraged DOE to perform its own testing, interviews, or research to better understand the energy impact of alternative refrigerants. (Joint Advocates, No. 20 at p. 2)

As discussed in the June 2022 NOPD, DOE reviewed several studies to gauge the potential efficiency improvements alternative refrigerants could provide in comparison to R–410a refrigerants. *See* 87 FR 37934, 37948. Most of these studies were conducted in drop-in applications and were not performed on PTAC or PTHP equipment specifically. *Id.* DOE may look to conduct physical testing with alternate refrigerants in the future to better evaluate the efficiency benefits associated with them. However, at this point, DOE does not have any physical test data and is therefore keeping alternative refrigerants screened out.

b. Other Technologies Not Considered in the Engineering Analysis

Typically, energy-saving technologies that pass the screening analysis are evaluated in the engineering analysis. However, in some cases technologies are not included in the analysis for reasons other than the screening criteria. These are discussed in the following paragraphs.

Technologies Previously Eliminated From the July 2015 Final Rule

In the July 2015 final rule, DOE identified several technology options that were not included in the engineering analysis because of three additional considerations: (1) efficiency benefits of the technologies were negligible; (2) data was not available to evaluate the energy efficiency characteristics of the technology; and/or (3) test procedure and EER and COP metrics did not measure the energy impact of the technology. *See* 80 FR 43161, 43172; 79 FR 55538, 55555–55556 (September 16, 2014). In the June 2022 NOPD, DOE maintained its position that these technologies should remained eliminated. *See* 87 FR 37934, 37948. These technologies are listed below under each consideration:

(1) Efficiency benefits of the technologies were negligible:

- Re-circuiting heat exchanger coils;
- Rifled interior tube walls;

(2) Data was not available to evaluate the energy efficiency characteristics of the technology:

- Microchannel heat exchangers;

(3) Test procedure and EER and COP metrics did not measure the energy impact of the technology:

- Variable speed compressors;
- Complex control boards (fan motor controllers, digital ''energy management'' control interfaces, heat pump controllers);
- Corrosion protection;
- Hydrophobic material treatment of heat exchangers;
- Clutched motor fans; and
- TEVs.

Technology Options Benefiting Part-Load and Low Temperature Performance

In the June 2022 NOPD, noting that the current EER and COP metrics do not

measure part-load performance and low temperature heating performance, DOE proposed to exclude the following technologies from the engineering analysis:

- Variable speed condenser fan/motor;
- Variable speed indoor blower/motor;
- Variable speed compressors;
- TEVs
- EEVs
- Defrost control strategies
- Electric resistance boost control strategies
- Compressor cut-out controls

87 FR 37934, 27949

As discussed, DOE stated it may consider adopting for PTACs and PTHPs a cooling-mode metric that integrates part-load performance and a heating metric that includes performance at low ambient temperatures in the ongoing test procedure rulemaking. *See* 86 FR 28005, 28009–28011. If DOE amends the PTAC and PTHP test procedure to incorporate these changes, it will conduct any analysis for future standards rulemakings, if any, based on the amended test procedure. DOE is still evaluating potential amendments to the test procedure. At present, DOE is unable to consider energy savings from a part-load metric or low temperature heating performance.

c. Remaining Technologies

After reviewing each technology, DOE did not screen out the following technology options and considers them as design options in the engineering analysis. These technology options are the same as those retained in the July 2015 final rule:

(1) Higher Efficiency Compressors
(2) Higher Efficiency Fan Motors
(3) Increased Heat Exchanger Area
(4) Improved Air Flow and Fan Design

DOE has determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes and improve efficiency as determined by the DOE test procedure. For additional details on the technologies included in the engineering analysis, see chapter 4 of the July 2015 final rule TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of PTACs and PTHPs. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class evaluated, DOE estimates the baseline cost, as well as the incremental cost for the product/equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

In the July 2015 final rule, DOE adopted an efficiency-level approach combined with a cost-assessment approach to determine the cost-efficiency relationship. *See* 80 FR 43162, 43173. In the June 2022 NOPD, based on the technology options considered and a review of available efficiencies in the market, DOE concluded that the available efficiencies on the market have not significantly changed since the 2015 rulemaking. *See* 87 FR 37934, 37949. DOE's review of current PTAC and PTHP designs also led to the conclusion that design options used to achieve higher EER and/or COP have not changed since 2015. *Id.* In this final determination, DOE utilized the same analysis as in the July 2015 final rule, but with updated costs to account for inflation and other effects. As discussed in section IV.A, DOE's proposed determination was generally supported by commenters and no alternative analysis methodology was presented. Thus, DOE did not revise the NOPD analysis, concluding that it is representative of the relationship between costs and potential increase in efficiency.

The methodology used to perform the analysis and derive the cost-efficiency relationship is described in chapter 5 of the July 2015 final rule TSD.

2. Equipment Classes Analyzed

In the July 2015 final rule, DOE developed its engineering analysis for the six equipment classes associated with standard-size PTACs and PTHPs. *See* 80 FR 43162, 43174–43177. DOE did not conduct an engineering analysis for non-standard size equipment classes because of their low and declining market share and because of a lack of adequate information to analyze these units. *See* 80 FR 43162, 43174.

In the June 2022 NOPD, DOE proposed to analyze the same equipment classes as in the July 2015 final rule. *See* 87 FR 37934, 27950. DOE did not receive any comments in relation to this, and is analyzing the same equipment classes in this final determination.

Table IV–4 sets out the equipment classes analyzed in this rulemaking.

TABLE IV–4—EQUIPMENT CLASSES ANALYZED IN THIS RULEMAKING

Equipment class		
Equipment	Category	Cooling capacity
PTAC	Standard Size	<7,000 Btu/h.

TABLE IV–4—EQUIPMENT CLASSES ANALYZED IN THIS RULEMAKING—Continued

Equipment class		
Equipment	Category	Cooling capacity
		≥7,000 Btu/h and ≤15,000 Btu/h.
PTHP	Standard Size	>15,000 Btu/h. <7,000 Btu/h. ≥7,000 Btu/h and ≤15,000 Btu/h. >15,000 Btu/h.

3. Baseline Efficiency Levels

DOE considered the current minimum energy conservation standards to establish the baseline efficiency levels for each standard size equipment class, using the 9,000 btu/h and 15,000 Btu/h cooling capacities as representative capacities for the standard size equipment classes. The baseline efficiency levels for the analyzed representative units are presented below in Table IV–5.

TABLE IV–5—BASELINE EFFICIENCY LEVELS

Equipment type	Equipment class	Baseline efficiency equation	Cooling capacity	Baseline efficiency level
PTAC	Standard Size	EER = 14.0 − (0.300 × Cap†/1000)	9,000 Btu/h 15,000 Btu/h	11.3 EER. 9.5 EER.
PTHP	Standard Size	EER = 14.0 − (0.300 × Cap†/1000) COP = 3.7 − (0.052 × Cap†)	9,000 Btu/h 15,000 Btu/h	11.3 EER. 3.2 COP. 9.5 EER. 2.9 COP.

† Cap means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

4. Maximum Available and Maximum Technologically Feasible Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also considers the max-tech efficiency level, which it defines as the level that represents the theoretical maximum possible efficiency if all available design options are incorporated in a model. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible.

In the June 2022 NOPD, DOE noted that since the screened in design options for the engineering analysis were the same as those considered in the July 2015 final rule and the available efficiencies have not significantly changed since the 2015 rulemaking, DOE saw no reason to revise the max-tech levels. *See* 87 FR 37934, 37951.

DOE did not receive any comments pertaining to the max-tech levels presented in the June 2022 NOPD. Therefore, in this final determination, DOE maintains the same max-tech levels as those in the 2015 rulemaking. Table IV–6 shows the max-tech efficiency levels.

TABLE IV–6—MAX-TECH AND MAXIMUM-AVAILABLE EFFICIENCY LEVELS

Equipment class	Max-tech July 2015 final rule [a]	Maximum-available current market
Standard Size PTAC <7,000 Btu/h	13.8 EER [b]	13.0 EER.
Standard Size PTAC ≥7,000 Btu/h and ≤15,000 Btu/h.	EER = 16.3 − (0.354 × Cap [c])	EER = 15.8 − (0.308 × Cap [c]). [d]
Standard Size PTAC >15,000 Btu/h	11.0 EER	9.7 EER.
Standard Size PTHP <7,000 Btu/h	13.8 EER [b] 3.8 COP [b]	13.1 EER 4.0 COP.
Standard Size PTHP ≥7,000 Btu/h and ≤15,000 Btu/h.	EER = 16.3 − (0.354 × Cap [c]) COP = 4.3 − (0.073 × Cap [c])	EER = 15.8 − (0.308 × Cap [c]) [d] COP = 4.6 − (0.075 × Cap [c]). [d]
Standard Size PTHP >15,000 Btu/h [3]	11.0 EER 3.2 COP.	N/A. [e]

a. See Table IV.4 at 80 FR 43162, 43175.

b. Based on Max Tech equation shown for Standard Size PTACs and PTHPs, ≥7,000 Btu/h and ≤15,000 Btu/h at a value of 7,000 Btu/h.

c. Cap means cooling capacity in thousand Btu/h.

d. Based on method of creating a linear fit between the two models in the Compliance Certification Database (''CCD'') Database that were the highest absolute value above the baseline.

e. Based on DOE's review of equipment currently available on the market, DOE did not identify any PTHP models with a cooling capacity greater than 15,000 Btu/h.

5. Incremental Efficiency Levels

In the June 2022 NOPD, DOE analyzed several incremental efficiency levels between the baseline and max-tech levels and obtained incremental cost data at each of these levels. *See* 87 FR 37934, 37952. DOE considered five efficiency levels beyond the baseline efficiency level up to the max-tech level for each equipment class. These levels were 2.2, 6.2, 10.2, 14.2 and 16.2 precents more efficient than the amended PTAC and PTHP standards that became effective on July 21, 2015, and are the same incremental efficiency levels evaluated in the July 2015 final rule. *Id.*

DOE is utilizing the same incremental efficiency levels in this final determination. These levels are presented in Table IV–7.

TABLE IV–7—INCREMENTAL EFFICIENCY LEVELS FOR STANDARD SIZE PTACS AND PTHPS

Equipment type	Cooling capacity	Efficiency levels (percentages relative to 2015 ECS)					
		Baseline*	EL1, 2.2%	EL2, 6.2%	EL3, 10.2%	EL4, 14.2%	EL5, 16.2% (Max-Tech)
PTAC	All, EER	14.0 – (0.300 × Cap†).	14.4 – (0.312 × Cap†).	14.9 – (0.324 × Cap†).	15.5 – (0.336 × Cap†).	16.0 – (0.348 × Cap†).	16.3 – (0.354 × Cap†).
	9,000 Btu/h	11.3 EER	11.5 EER	12.0 EER	12.4 EER	12.9 EER	13.1 EER.
	15,000 Btu/h	9.5 EER	9.7 EER	10.0 EER	10.4 EER	10.8 EER	11.0 EER.
Equipment Type	Cooling Capacity	Baseline*	EL1, 2.2%	EL2, 6.2%	EL3, 10.2%	EL4, 14.2%	EL5, 16.2% (Max-Tech).
PTHP	All, EER	14.0 – (0.300 × Cap†).	14.4 – (0.312 × Cap†).	14.9 – (0.324 × Cap†).	15.5 – (0.336 × Cap†).	16.0 – (0.348 × Cap†).	16.3 – (0.354 × Cap†).
	All, COP	3.7 – (0.052 × Cap†).	3.8 – (0.058 × Cap†).	4.0 – (0.064 × Cap†).	4.1 – (0.068 × Cap†).	4.2 – (0.070 × Cap†).	4.3 – (0.073 × Cap†).
	9,000 Btu/h	11.3 EER	11.5 EER	12.0 EER	12.4 EER	12.9 EER	13.1 EER
		3.2 COP	3.3 COP	3.4 COP	3.5 COP	3.6 COP	3.6 COP.
	15,000 Btu/h	9.5 EER	9.7 EER	10.0 EER	10.4 EER	10.8 EER	11.0 EER
		2.9 COP	2.9 COP	3.0 COP	3.1 COP	3.2 COP	3.2 COP.

*This level represents the current Federal minimum standards for PTAC and PTHP equipment.
†Cap means cooling capacity in thousand Btu/h at 95°F outdoor dry-bulb temperature.

6. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the July 2015 final rule, DOE performed a cost analysis that involved testing and then conducting physical teardowns on several test units to develop a manufacturing cost model and to evaluate key design features (*e.g.,* improved heat exchangers, compressors, fans/fan motors). *See* 80 FR 43162, 43176. In the June 2022 NOPD, DOE noted that the design options being considered in this rulemaking are the same as in the 2015 rulemaking and the efficiency distributions for available PTACs and PTHPs have not changed compared to the 2015 rulemaking. *See* 87 FR 37934, 37952–37953. Therefore, DOE utilized the same cost analysis conducted for the July 2015 final rule, but adjusted the analysis for inflation and other market effects. *See* 87 FR 37953. To adjust the cost analysis, DOE used industry specific producer price index (''PPI'') data published by the Bureau of Labor Statistics (''BLS''). The PPI measures the average change over time in the selling prices from the perspective of the seller. DOE evaluated the change in PPI from the year 2013 (used in the previous rulemaking) to year 2021 (current rulemaking), and used the percent increase to scale the manufacturer production costs (''MPCs'') from the previous rulemaking. *Id.* In this final determination, DOE is using the same approach as in the June 2022 NOPD.

7. Cost-Efficiency Results

The results of the engineering analysis are reported as a set of cost-efficiency data (or ''curves'') in the form of MPC (in dollars) versus EER, which form the basis for other analyses in the final determination. DOE created cost-efficiency curves for the two representative cooling capacities within the two standard-size equipment classes of PTACs and PTHPs, as discussed in section IV.C.2 previously. DOE developed the incremental cost-efficiency results shown in Table IV–8 for each representative cooling capacity. These cost results are incremented from a baseline efficiency level equivalent to the current Federal minimum standards.

TABLE IV–8—INCREMENTAL MANUFACTURING PRODUCTION COSTS (MPC) FOR STANDARD SIZE PTACS AND PTHPS

Equipment type	Cooling capacity	Efficiency levels					
		Baseline*	EL1	EL2	EL3	EL4	EL5
PTAC	9,000 Btu/h	$0.00	$5.22	$15.36	$26.32	$38.11	$44.31
	15,000 Btu/h	0.00	5.00	18.71	36.37	58.00	70.30
		Baseline*	EL1	EL2	EL3	EL4	EL5
PTHP	9,000 Btu/h	0.00	5.22	15.36	26.32	38.11	44.31
	15,000 Btu/h	0.00	5.00	18.71	36.37	58.00	70.30

* This level represents the current Federal minimum standards for PTAC and PTHP equipment.

To account for manufacturers' non-production costs and profit margin, DOE applied a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. In this final determination, DOE retained the manufacturer markup of 1.27 from the June 2022 NOPD. *See* 87 FR 37934, 37954.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

In the July 2015 final rule, DOE identified four distribution channels for PTACs and PTHPs to describe how the equipment passes from the manufacturer to the consumer. *See* 80 FR 43162, 43177. The four distribution channels are listed below:

The first distribution channel is only used in the new construction market, and it represents sales directly from a manufacturer to the end use customer through a national account.

Manufacturer → National Account → End user

The second distribution channel represents replacement markets, where a manufacturer sells to a wholesaler, who sells to a mechanical contractor, who in turn sells to the end user.

Manufacturer → Wholesaler → Mechanical Contractor → End user

The third distribution channel, which is used in both new construction and replacement markets, the manufacturer sells the equipment to a wholesaler, who in turn sells it to a mechanical contractor, who in turn sells its to a general contractor, who sells it to the end user.

Manufacturer → Wholesaler → Mechanical Contractor → General Contractor→ End user

Finally, in the fourth distribution channel, which is also used in both the new construction and replacement markets, a manufacturer sells to a wholesaler, who in turn sells directly to the end user.

Manufacturer → Wholesaler → End User

80 FR 43162, 43177.

In the June 2022 NOPD, DOE did not update the distribution channels from the July 2015 rule. DOE considered the four distribution channels shown in Table IV–9 and estimated percentages of the total sales in the new construction and replacement markets for each of the four distribution channels as listed in Table IV–10. *See* 87 FR 37934, 37954.

TABLE IV–9—DISTRIBUTION CHANNELS FOR PTAC AND PTHP EQUIPMENT

Channel 1	Channel 2	Channel 3	Channel 4
Manufacturer (through national accounts).	Manufacturer	Manufacturer	Manufacturer
	Wholesaler	Wholesaler	Wholesaler
		Mechanical Contractor	Mechanical Contractor
			General Contractor
Consumer	Consumer	Consumer	Consumer

TABLE IV–10—SHARE OF MARKET BY DISTRIBUTION CHANNEL FOR PTAC AND PTHP EQUIPMENT

Distribution channel	New construction (%)	Replacement (%)
Wholesaler-Consumer	30	15
Wholesaler-Mech Contractor-Consumer	0	25
Wholesaler-Mech Contractor-General Contractor-Consumer	38	60
National Account	32	0
Total	100	100

In the June 2022 NOPD, DOE updated the sources used in the July 2015 final rule to derive markups for each step of the distribution channels with the following data sources: (1) the 2017 Annual Wholesale Trade Survey,[11] to develop wholesaler markups; (2) the Air Conditioning Contractors of America's (''ACCA'') ''2005 Financial Analysis for the HVACR Contracting Industry'' [12] and 2017 U.S. Census Bureau economic data [13] to develop mechanical contractor markups; and (3) 2017 U.S. Census Bureau economic data for the commercial and institutional building construction industry to develop general contractor markups.[14] *See* 87 FR 37934, 37954. The overall markup is the product of all the markups (baseline or incremental markups) for the different steps within a distribution channel. Replacement channels include sales taxes, which were calculated based on State sales tax data reported by the Sales Tax Clearinghouse.

DOE received no comments in response to its markups analysis in the NOPD and maintains this analysis in this final determination. Chapter 6 of the final determination TSD provides details on DOE's development of the markups.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual unit energy consumption (''UEC'') of PTACs and PTHPs at different efficiencies in representative U.S. commercial buildings, and to assess the energy savings potential of increased PTAC and PTHP efficiency. The energy use analysis estimates the range of energy use of PTACs and PTHPs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

In the June 2022 NOPD, in response to stakeholder comments on the December 2020 ECS RFI, DOE developed a new energy use analysis compared to the 2015 final rule. 87 FR 37934, 37954–56. To develop UECs, DOE began with the cooling and heating loads from the new construction 2004 vintage, small hotel commercial reference building prototype.[15] *Id.* While more recent prototypes are available that reflect more current building codes, DOE notes that its energy use analysis is meant to represent the energy use in the current stock of buildings that use PTACs and PTHPs and the 2004 prototype is more reflective of the stock than a newer prototype.[16] This prototype is a four floor, rectangular building with 35 guest rooms, each of which uses a PTAC for cooling and heating. The cooling and heating loads were developed in EnergyPlus [17] using Typical Meteorological Year 3 (''TMY3'') weather data along with the default assumptions for building envelope, ventilation, occupancy schedule, cooling and heating thermostat set points, and square footage. A detailed description of the small hotel commercial reference building can be found on the DOE commercial reference building website.[18] The UECs were developed only using the guestroom load profiles and the PTHP UECs use the heat-pump to meet the heating loads.

Of the 35 hotel rooms in the small hotel commercial reference building prototype, 20 have a design day size below 10,000 Btu/h and the others have design day sizes above 20,000 Btu/h. The largest standard size PTACs and PTHPs in CCD [19] are less than 17,000 Btu/h, therefore, DOE did not consider the small hotel guestroom loads with design days over 20,000 Btu/h. To create full load cooling and heating hours, for each climate zone DOE took the sum of the cooling and heating loads from the 20 guestrooms with a design day size below 10,000 Btu/h and divided them by the sum of the design day capacities for the same hotel guestrooms. DOE then took the full-load cooling and heating hours and multiplied them by the full-load cooling and heating power for each efficiency level. The full-load cooling power was derived by dividing the representative cooling capacity of either 9,000 Btu/h or 15,000 Btu/h by the EERs of the representative efficiency levels. The heating power for PTHPs was derived by converting the 9,000 Btu/h and 15,000 Btu/h capacities into Watts, and dividing them by the representative COPs.

DOE created UECs for each of the 16 International Energy Conservation Code (''IECC'') Climate Zones in the U.S. by simulating the small hotel prototype in one representative city for each climate zone. DOE used county level population data from the U.S. Census Bureau [20] along with a Pacific Northwest Laboratory report,[21] which assigned a climate zone to each county in the U.S. to develop population weighting factors for each climate zone. Next, DOE used the county level population data and climate zones to determine the weighted average UEC for each Census Division, with Census Division 9 split into two, California and the remaining states of Census Division 9 (Washington, Oregon, Hawaii, and Alaska). The resulting UECs represent the average small hotel guestroom cooling and heating energy use for each Census Division (with Census Division 9 split into two regions as explained previously).

DOE made further adjustments to each UEC for each climate zone to better account for the field energy use of PTACs and PTHPs. The Energy Information Administration's (''EIA'') National Energy Modeling System (''NEMS''), which is used to develop the Annual Energy Outlook (''AEO''), develops a time series of scaling factors that capture the improvements of building envelopes in new and existing buildings over time.[22] These building shell scalars are multiplied by the UEC to demonstrate the reduction in cooling and heating energy use by improved building envelopes by census division and building type between the year of construction of the small hotel commercial reference building (2004) and the compliance year (2026). DOE applied the scalars for the lodging building type to the UECs developed using the cooling and heating loads from the small hotel commercial reference building. DOE calculated the

[11] U.S. Census Bureau. *2017 Annual Wholesale Trade Report, NAICS 4236: Household Appliances and Electrical and Electronic Goods Merchant Wholesalers,* 2017, Washington, DC *www.census.gov/wholesale/index.html.*

[12] ''2005 Financial Analysis for the HVACR Contracting Industry,'' Air Conditioning Contractors of America. 2005.

[13] ''Plumbing, Heating, and Air-Conditioning Contractors. Sector 23: 238220. Construction: Industry Series, Preliminary Detailed Statistics for Establishments, 2017,'' U.S. Census Bureau. 2017. Available at: *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html.*

[14] ''2017 Economic Census, Construction Industry Series and Wholesale Trade Subject Series,'' U.S. Census Bureau. Available online at *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html.*

[15] *https://www.energy.gov/eere/buildings/new-construction-commercial-reference-buildings.*

[16] In Commercial Buildings Energy Consumption Survey (''CBECS'') 2018, 80% of lodging buildings that use an individual room air conditioner were constructed prior to the year 2000.

[17] *https://www.energy.gov/eere/buildings/downloads/energyplus-0.*

[18] *https://www.energy.gov/eere/downloads/reference-buildings-building-type-small-hotel.*

[19] Available at: *www.regulations.doe.gov/certification-data/CCMS–4-Air_Conditioners_and_Heat_Pumps_-_Package_Terminal.html#q=Product_Group_s%3A%22Air%20Conditioners%20and%20Heat%20Pumps%20-%20Package%20Terminal%22* (last accessed, 3/25/2022).

[20] Available at: *www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par_textimage_70769902.*

[21] Available at: *www.energy.gov/sites/prod/files/2015/10/f27/ba_climate_region_guide_7.3.pdf.*

[22] Available at: *www.eia.gov/analysis/studies/buildings/buildingshell/.*

improvement between 2004, the year of the small hotel reference building, and 2026, the compliance year, using the new construction time series to create a new construction UEC and the existing building time series to create an existing building UEC in 2026. DOE weighted the results using shipments projections to new construction (12 percent) and existing buildings (88 percent) to create a weighted average UEC in 2026.

DOE received no comments on the energy use analysis in the NOPD, and maintains this analysis for the final determination.

Chapter 7 of the final determination TSD provides details on DOE's energy use analysis for PTACs and PTHPs.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for PTACs and PTHPs. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of PTACs and PTHPs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for PTACs and PTHPs used in small hotel guestrooms. As stated previously, DOE developed a sample of small hotel guestroom PTAC and PTHP UECs by census division based on the DOE small hotel reference building. For each census division, DOE determined the average energy consumption for a PTAC or PTHP in a small hotel guestroom and the appropriate electricity price. By developing a sample of UECs by census division, the analysis captured the variability in energy consumption and energy prices associated with the use of PTACs and PTHPs.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for equipment lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE used to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and PTAC and PTHP user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 scenarios per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given PTAC or PTHP owner, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that the PTAC or PTHP owner is not impacted by the standard level. By accounting for PTAC or PTHP owners who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of PTACs and PTHPs as if each were to purchase a new product in the expected year of required compliance with new or amended standards. Any amended standards would apply to PTACs and PTHPs manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6313(a)(6)(C)(iv)(I)) For purposes of its analysis, DOE used 2026 as the first year of compliance with any amended standards for PTACs and PTHPs.

Table IV–11 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations for the NOPD analysis. *See* 87 FR 37934, 37956–37957. DOE received no comments on its LCC and PBP analysis in response to the NOPD, and has maintained the same methodology in this final determination. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final determination TSD and its appendices.

TABLE IV–11—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer, contractor, and distributor markups and sales tax, as appropriate. A constant price trend was used to project product costs.
Installation Costs	Baseline installation cost determined with data from RS Means for the 2015 final rule, updated to 2021 dollars. Assumed no change with efficiency level.
Annual Energy Use	The total full-load cooling and heating hours multiplied by the full load cooling and heating power at each efficiency level. *Variability:* Based on the 16 IECC climate zones and representative cities from the DOE commercial reference building then mapped to census divisions (with census division 9 split into California and the rest of the census division).

TABLE IV–11—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Energy Prices	Electricity: Based on Edison Electric Institute data of average and marginal prices. *Variability:* Regional energy prices by census division, with census division 9 separated into California and the rest of the census division.
Energy Price Trends	Based on the Annual Energy Outlook 2022 with Projections to 2050 (*AEO 2022*) price projections.
Repair and Maintenance Costs	Maintenance costs do not change by efficiency level. The materials portion of repair costs changes by efficiency level; the labor costs are constant and based on RS Means. Values from 2015 final rule were converted to 2021 dollars.
Product Lifetime	Average: 8 years.
Discount Rates	Commercial Discount rates for lodging, healthcare, and small office. The approach involves estimating the cost of capital of companies that purchase PTAC and PTHP equipment.
Compliance Date	2026.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final determination TSD.

1. PTAC and PTHP Equipment Cost

To calculate consumer PTAC and PTHP costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

DOE used a constant trend to project equipment prices between 2021 (the year for which MPCs were developed) and 2026. The constant trend is based on a historical time series of the deflated PPI for all other miscellaneous refrigeration and air conditioning equipment between 1990 and 2021.[23] The deflated PPI does not indicate a long term upward or downward trend, therefore DOE used a constant price trend for PTACs and PTHPs. *See* 87 FR 37934, 37957.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used the installation costs developed from the 2015 final rule [24] and converted them to 2021 dollars using the gross domestic product (''GDP'') implicit price deflator [25] to estimate the labor costs associated with baseline installation cost for PTACs and PTHPs. As representative efficiency levels for PTACs and PTHPs in this analysis are single-stage, packaged units that fit into a wall sleeve, DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each census division, DOE determined the energy consumption for a PTAC or PTHP in a small hotel guestroom at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports.[26] Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[27]

DOE's methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For PTACs and PTHPs, DOE developed UECs by census division for each equipment class and efficiency level for the summer (May to September) and winter (October to April) seasons. The average summer and winter electricity price for large commercial buildings was used to measure the baseline energy cost. The summer and winter marginal prices for large commercial buildings, using a marginal load factor of 0.5 were used to measure the operating cost savings from higher efficiency PTACs and PTHPs. See chapter 8 of the final determination TSD for details.

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO 2022,* which has an end year of 2050.[28] To estimate price trends after 2050, DOE kept the energy price constant at the 2050 value.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing PTAC and PTHP components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the PTAC or PTHP. Typically, small incremental increases in product efficiency produce no changes in maintenance costs compared to baseline efficiency products. Repair costs consist of the cost of labor to perform the repair as well as the cost of materials to replace the component that has failed. DOE assumes that the labor costs stay constant and the material costs will increase proportionally with the incremental increase of the MPC. In the July 2015 final rule, DOE used the material and labor costs associated with

[23] Available at: *https://www.bls.gov/ppi/.*

[24] See chapter 8 of the 2015 final rule technical support documents (available at: *https://www.regulations.gov/document/EERE-2012-BT-STD-0029-0040*).

[25] *https://fred.stlouisfed.org/series/GDPDEF.*

[26] Available at: *https://netforum.eei.org/eweb/DynamicPage.aspx?WebCode=COEPubSearch&pager=12.*

[27] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. *ees.lbl.gov/publications/non-residential-electricity-prices.*

[28] EIA. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed May 5, 2022).

repair of equipment components covered and not covered by a standard manufacturer warranty. *See* 80 FR 43162, 43180. Based on a report of component failure probability and warranty terms, and on component material and labor costs from RS Means data,[29] DOE determined the expected value of the total cost of a repair and annualized it to determine the annual repair cost. DOE scaled by cooling capacity and MSP to determine repair costs for the equipment classes and considered efficiency levels. *Id.* For this analysis, DOE updated the labor portion of the annualized repair cost using the GDP implicit price deflator [30] and updated the material portion of baseline products by the PPI for Air-conditioning, refrigeration, and forced air heating equipment manufacturing.[31] The material portion of the repair cost for higher efficiency components was scaled with the MSPs.

6. Product Lifetime

For PTACs and PTHPs, DOE used the same lifetime estimates from July 2015 final rule. *See* 80 FR 43162, 43180. DOE requested comment on this approach to equipment lifetime in the December 2020 ECS RFI. 85 FR 82952, 82963.

The average lifetime is assumed to be eight years, and the distribution allows for a range of lifetimes up to 16 years. DOE's lifetime assumption with a mean of 8 years falls between the various stakeholder comments on the December 2020 ECS RFI and considering no additional data were identified to support a shorter or longer life, DOE maintained the same lifetime assumptions as in the July 2015 final rule.

7. Discount Rates

DOE's method views the purchase of a higher efficiency appliance as an investment that yields a stream of energy cost savings. DOE derived the discount rates for the LCC analysis by estimating the cost of capital for companies or public entities that purchase PTACs and PTHPs. For private firms, the weighted average cost of capital (''WACC'') is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing, as estimated from financial data for publicly traded firms in the sectors that purchase PTACs and PTHPs.[32] As discount rates can differ across industries, DOE estimates separate discount rate distributions for a number of aggregate sectors with which elements of the LCC building sample can be associated.

In this analysis, DOE estimated the cost of capital of companies that purchase PTAC and PTHP equipment. DOE used the same types of companies that were used in the July 2015 final rule, large hotel/motel chains, independent hotel/motel, assisted living/health care, and small office. 80 FR 43162, 43181. More details regarding the DOE's estimates of discount rates can be found in chapter 8 of the final determination TSD.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of PTACs and PTHPs for 2026, DOE used model counts from CCD [33] and applied a growth rate of 1 EER every 35 years, which was used in the July 2015 final rule and is based on a growth trend in the absence of standards developed in the 2004 commercial unitary air conditioner advanced notice of proposed rulemaking (''2004 ANOPR'').[34] 80 FR 43162, 43183. The estimated market shares for the no-new-standards case for PTACs and PTHPs are shown in Table IV–12. DOE notes that there are currently units in CCD that are at the baseline efficiency level, but given the small difference between the baseline and EL 1, the growth rate of 1 EER every 35 years leads to no products at the baseline in 2026. See chapter 8 of the final determination TSD for further information on the derivation of the efficiency distributions.

TABLE IV–12—MARKET SHARES FOR THE NO-NEW-STANDARDS CASE

Equipment type	Cooling capacity	Market share by EL					
		Baseline * (%)	EL1 (%)	EL2 (%)	EL3 (%)	EL4 (%)	EL5 (%)
PTAC	9,000 Btu/h	0	44	29	11	6	10
	15,000 Btu/h	0	0	52	34	14	0
		Baseline * (%)	EL1 (%)	EL2 (%)	EL3 (%)	EL4 (%)	EL5 (%)
PTHP	9,000 Btu/h	0	44	21	16	10	9
	15,000 Btu/h	0	0	41	40	20	0

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient PTACs and PTHPs, compared to baseline PTACs and PTHPs, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the PTACs and PTHPs mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the PTACs and

[29] RS Means Company, Inc. ''RSMeans Facilities Maintenance & Repair Cost Data,'' 2013.

[30] *https://fred.stlouisfed.org/series/GDPDEF.*

[31] *https://www.bls.gov/ppi/.*

[32] Modigliani, F. and M. H. Miller. The Cost of Capital, Corporations Finance and the Theory of Investment. American Economic Review. 1958. 48(3): pp. 261–297.

[33] *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed: March 9, 2022).

[34] See chapter 10 of DOE's technical support document underlying DOE's July 29, 2004 ANOPR. Available at: *https://www.regulations.gov/document/EERE-2006-STD-0103-0078.*

PTHPs and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

G. Shipments Analysis

DOE uses projections of annual shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[35] The shipments model takes an accounting approach in tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In the June 2022 NOPD, DOE developed shipment projections based on historical data and an analysis of key market drivers for this equipment. 87 FR 37934, 37959 (citing 80 FR 43162, 43182). Historical shipments were used to build up an equipment stock and also to calibrate the shipments model. DOE separately calculated shipments intended for new construction and replacement applications. The sum of new construction and replacement shipments was the total shipments. *Id.*

New construction shipments were calculated using projected floor space of healthcare, lodging, and small office buildings from *AEO 2022* and historical PTAC and PTHP saturation in new buildings, which was estimated by dividing historical new shipments by new construction floor space. *Id.* Replacement shipments were equal to the number of units that fail in a given year. The failures were based on a retirement function in the form of a Weibull distribution with inputs based on lifetime values from the LCC analysis to estimate the number of units of a given age that fail in each year. *Id.*

DOE received no comments on its shipments analysis in the NOPD and has maintained the same methodology for this final determination.

For further information on the shipments analysis, see chapter 9 of the final determination TSD.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[36] (''Consumer'' in this context refers to consumers of the PTACs and PTHPs being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of PTACs and PTHPs sold from 2026 through 2055.

DOE evaluates the effects of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each PTAC and PTHP class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each PTAC and PTHP class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the ELs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of PTACs and PTHPs with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each EL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV–13 summarizes the inputs and methods DOE used for the NIA analysis for the NOPD. *See* 87 FR 37934, 37960–61. DOE received no comments in response to its analysis, and maintains the same inputs and methods in this final determination. Discussion of these inputs and methods follows the table. See chapter 10 of the final determination TSD for details.

TABLE IV–13—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Modeled Compliance Date of Standard	2026.
Efficiency Trends	No-new-standards case—1 EER every 35 years. Standards cases—1 EER every 35 years.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each EL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL. Future product prices are constant.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	The materials portion of annual repair costs scale with MPCs, maintenance costs do not change by EL.
Energy Prices	*AEO 2022* projections (to 2050) and constant 2050 value through 2075.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO 2022*.
Discount Rate	3 percent and 7 percent.
Present Year	2021.

[35] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

[36] The NIA accounts for impacts in the 50 states and Washington DC.

1. Equipment Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.E.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2026). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

To develop no-new-standards case and standards case efficiency trends after 2026, DOE used the same approach as in the July 2015 final rule, which grows the efficiency trend at a rate of 1 EER every 35 years for all product classes. 80 FR 43162, 43183.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (EL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. For PTAC/PTHP, DOE did not consider any rebound as the entities using the equipment are typically not the ones paying the energy costs.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [37] that EIA uses to prepare its AEO. The FFC factors incorporate losses in production, and delivery in the case of natural gas, (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final determination TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.E.1 of this document, DOE assumed a constant price trend for PTACs and PTHPs. DOE applied the same constant price trend to project prices for each PTAC and PTHP class at each considered efficiency level.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy, and repair costs, which remain constant through the analysis period. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average commercial electricity price changes in the Reference case from *AEO 2022,* which has an end year of 2050. To estimate price trends after 2050, DOE kept the 2050 value constant through 2075.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For the NOPD, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[38] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for PTACs and PTHPs. It addresses the ELs examined by DOE and the projected impacts of each of these levels. Additional details regarding DOE's analyses are contained in the final determination TSD supporting this document.

A. Economic Impacts on PTAC and PTHP Consumers

DOE analyzed the cost effectiveness (*i.e.,* the savings in operating costs throughout the estimated average life of PTACs and PTHPs) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the PTACs and PTHPs, which are likely to result from the imposition of a standard at an EL by considering the LCC and PBP at each EL. These analyses are discussed in the following sections.

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual

[37] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/analysis/pdfpages/0581(2009)index.php* (last accessed 4/15/2022).

[38] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://www.federalregister.gov/documents/2003/10/09/03-25606/circular-a-4-regulatory-analysis* (last accessed April 15, 2022).

operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final determination TSD provides detailed information on the LCC and PBP analyses.

Tables V–1 through V–4 show the LCC and PBP results for the ELs considered in this analysis. The simple payback is measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.E.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each EL. The savings refer only to consumers who are affected by a standard at a given EL. Those who already purchase a product with efficiency at or above a given EL are not affected. Consumers for whom the LCC increases at a given EL experience a net cost.

TABLE V–1—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD SIZE PTACS WITH A COOLING CAPACITY OF 9,000 BTU/h

Efficiency level	LCC savings *2021$*	Simple payback period *years*
EL 1	$0.00	N/A
EL 2	1.92	5.6
EL 3	−0.47	6.0
EL 4	−5.60	6.5
EL 5	−8.70	6.8

TABLE V–2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD SIZE PTACS WITH A COOLING CAPACITY OF 15,000 BTU/h

Efficiency level	LCC savings *2021$*	Simple payback period *years*
EL 1	$0.00	N/A
EL 2	0.00	N/A
EL 3	6.39	4.1
EL 4	−1.77	4.9
EL 5	−8.68	5.3

TABLE V–3—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD SIZE PTHPS WITH A COOLING CAPACITY OF 9,000 BTU/h

Efficiency level	LCC savings *2021$*	Simple payback period *years*
EL 1	$0.00	N/A
EL 2	2.42	5.3
EL 3	0.72	5.7
EL 4	−3.75	6.2
EL 5	−6.48	6.4

TABLE V–4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD SIZE PTHPS WITH A COOLING CAPACITY OF 15,000 BTU/h

Efficiency level	LCC savings *2021$*	Simple payback period *years*
EL 1	$0.00	N/A
EL 2	0.00	N/A
EL 3	7.27	4.0
EL 4	−0.66	4.7
EL 5	−7.07	5.1

B. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for PTACs and PTHPs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each EL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2026–2055). Table V–5 presents DOE's projections of the NES for each EL considered for PTACs and PTHPs. The savings were calculated using the approach described in section IV.G of this document.

TABLE V–5—CUMULATIVE NATIONAL ENERGY SAVINGS FOR PTACS AND PTHPS; 30 YEARS OF SHIPMENTS (2026–2055)

	Efficiency level				
	1	2	3	4	5
	quads				
Primary energy	0.000	0.002	0.014	0.045	0.068
FFC energy	0.000	0.002	0.015	0.047	0.071

OMB Circular A–4 [39] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this final determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[40] The review timeframe

[39] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed April 15, 2022).

[40] For ASHRAE products, section 342(a)(6)(C) of EPCA requires DOE to review its standards every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity

Continued

established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to PTACs and PTHPs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V–6. The impacts are counted over the lifetime of PTACs and PTHPs purchased in 2026 to 2034.

TABLE V–6—CUMULATIVE NATIONAL ENERGY SAVINGS FOR PTACS AND PTHPS; 9 YEARS OF SHIPMENTS (2026–2034)

	Efficiency level				
	1	2	3	4	5
	quads				
Primary energy	0.000	0.002	0.011	0.023	0.029
FFC energy	0.000	0.002	0.011	0.023	0.030

a. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from an amended standard at each of the representative ELs considered for PTACs and PTHPs. In accordance with OMB's guidelines on regulatory analysis,[41] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V–7 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2026–2055.

TABLE V–7—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PTACS AND PTHPS; 30 YEARS OF SHIPMENTS (2026–2055)

Discount rate	Trial standard level (billion 2021$)				
	1	2	3	4	5
3 percent	0.000	−0.004	−0.043	−0.167	−0.268
7 percent	0.000	−0.004	−0.035	−0.116	−0.174

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–8. The impacts are counted over the lifetime of PTACs and PTHPs purchased in 2026–2034. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V–8—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PTACS AND PTHPS; 9 YEARS OF SHIPMENTS (2026–2034)

Discount rate	Trial standard level (billion 2021$)				
	1	2	3	4	5
3 percent	0.000	−0.004	−0.033	−0.088	−0.124
7 percent	0.000	−0.004	−0.029	−0.073	−0.102

C. Final Determination

EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), including PTACs and PTHPS, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The ''clear and convincing'' evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding.

Because an analysis of potential cost-effectiveness and energy savings first require an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then evaluates the energy savings potential and cost-effectiveness of potential amended standards.

analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 6 years rather than 3 years.

[41] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed April 15, 2022).

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for PTACs and PTHPs would be technologically feasible. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

DOE considers technologies incorporated in commercially available products or in working prototypes and improve efficiency to be technologically feasible. Per the technology options discussed in section IV.B.3 of this document and the screened-in technologies in section IV.B.4, DOE has determined, based on clear and convincing evidence, that amended energy conservation standards for PTACs and PTHPs would be technologically feasible.

2. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for PTACs and PTHPS would result in result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In the present case, DOE estimates that amended standards for PTACs and PTHPs would result in energy savings of 0.002 quads at EL 2, 0.013 quads at EL 3, 0.014 quads at EL 4, and 0.062 quads at EL 5 (the max-tech level) over a 30-year analysis period (2026–2055). However, as discussed in the following section DOE lacks the clear and convincing evidence necessary to determine that amended standards for PTACs and PTHPs would be economically justified.

3. Economic Justification

In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously (see section II.A of this document). (42 U.S.C. 6313(a)(6)(A)(ii)(II); 42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

One of those seven factors is the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products that are likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) This factor is typically assessed using the LCC and PBP analysis, as well as the NPV.

DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficiency in the considered PTACs and PTHPs (see results in Tables V–1 through V–4). DOE then aggregated the results from the LCC analysis to estimate the NPV of the total costs and benefits experienced by the Nation (see results in Tables V–7 and V–8). As noted, the inputs for determining the NPV are: (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. A summary of the analytical results can be found in Table V–9.

TABLE V–9—SUMMARY OF ANALYTICAL RESULTS OF PTAC AND PTHP EQUIPMENT

Category	EL1	EL 2	EL 3	EL 4	EL 5
Cumulative National FFC Energy Savings *quads*	0.000	0.002	0.015	0.047	0.071
NPV of Consumer Costs and Benefits *** *2021$ billion:*					
3% discount rate	0.000	−0.004	−0.043	−0.167	−0.268
7% discount rate	0.000	−0.004	−0.035	−0.116	−0.174
Consumer Mean LCC Savings 2021$:					
Standard Size PTACs—9,000 Btu/h	0.00	1.92	−0.47	−5.60	−8.70
Standard Size PTACs—15,000 Btu/h	0.00	0.00	6.39	−1.77	−8.68
Standard Size PTHPs—9,000 Btu/h	0.00	2.42	0.72	−3.75	−6.48
Standard Size PTHPs—15,000 Btu/h	0.00	0.00	7.27	−0.66	−7.07
Consumer Mean Payback Period:					
Standard Size PTACs—9,000 Btu/h	N/A	5.6	6.0	6.5	6.8
Standard Size PTACs—15,000 Btu/h	N/A	N/A	4.1	4.9	5.3
Standard Size PTHPs—9,000 Btu/h	N/A	5.3	5.7	6.2	6.4
Standard Size PTHPs—15,000 Btu/h	N/A	N/A	4.0	4.7	5.1

DOE estimates that amended standards for PTACs and PTHPs would result in NPV of $0.000 at EL 1, of −$0.004 billion at a 3 percent discount rate and −$0.004 billion at a 7 percent discount rate at EL 2, of −$0.043 billion at a 3 percent discount rate and −$0.035 billion at a 7 percent discount rate at EL 3, of −$0.167 billion at a 3 percent discount rate and −$0.116 billion at a 7 percent discount rate at EL 4, and of −$0.268 billion at a 3 percent discount rate and −$0.174 billion at a 7 percent discount rate at EL 5. Because the NPV values are negative and indicate no economic benefit, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards would be economically justified.

4. Summary

Based on the NPV being zero at EL 1 and negative at each higher EL, DOE has determined that the energy conservation standards for PTACs and PTHP do not need to be amended, having determined that it lacks ''clear and convincing'' evidence that amended standards would be economically justified.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must

adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for PTACs and PTHPs this determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the determination, will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA or a final regulatory flexibility analysis for this determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which determines that amended energy conservation standards for PTACs and PTHPs are unneeded under the applicable statutory criteria, imposes no new informational or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this action in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE has completed its NEPA review before issuing the final action.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final determination and has determined that it would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(b); 42 U.S.C. 6297) As this final determination would not amend the standards for PTAC and PTHPs, there is no impact on the policymaking discretion of the States. Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State,

local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this final determination according to UMRA and its statement of policy and determined that this final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor E.O.; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination, which does not amend energy conservation standards for PTACs and PTHPs, is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final determination.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[42] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[43]

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this determination prior to its effective date. The report will state that

[42] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed Jan 3, 2023).

[43] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

it has been determined that the determination is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Signing Authority

This document of the Department of Energy was signed on February 3, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–02655 Filed 2–10–23; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

Real Estate Settlement Procedures Act (Regulation X); Digital Mortgage Comparison-Shopping Platforms and Related Payments to Operators

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing this Advisory Opinion to address the applicability of the Real Estate Settlement Procedures Act (RESPA) section 8 to operators of certain digital technology platforms that enable consumers to comparison shop for mortgages and other real estate settlement services, including platforms that generate potential leads for the platform participants through consumers' interaction with the platform (Digital Mortgage Comparison-Shopping Platforms). Generally, this Advisory Opinion describes how an operator of a Digital Mortgage Comparison-Shopping Platform violates RESPA section 8 if the platform provides enhanced placement or otherwise steers consumers to platform participants based on compensation the platform operator receives from those participants rather than based on neutral criteria. More specifically, this Advisory Opinion states that an operator of a Digital Mortgage Comparison-Shopping Platform receives a prohibited referral fee in violation of RESPA section 8 when: the Digital Mortgage Comparison-Shopping Platform non-neutrally uses or presents information about one or more settlement service providers participating on the platform; that non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, those settlement service providers, thus constituting referral activity; and the operator receives a payment or other thing of value that is, at least in part, for that referral activity. Furthermore, if an operator of a Digital Mortgage Comparison-Shopping Platform receives a higher fee for including one settlement service provider compared to what it receives for including other settlement service providers participating on the same platform, that can be evidence of an illegal referral fee arrangement absent other facts indicating that the payment is not for enhanced placement or other form of steering.

DATES: This advisory opinion is effective on February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Brandy Hood, Joan Kayagil, or Michael G. Silver, Senior Counsels, Office of Regulations, at (202) 435–7700 or *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this Advisory Opinion through the procedures for its Advisory Opinions Policy.[1] Please review those procedures for more information.

I. Advisory Opinion

A. Background

1. RESPA Section 8

The Real Estate Settlement Procedures Act (RESPA)[2] provides a series of protections for consumers who are engaged in the process of buying a home, applying for or closing on a mortgage, making escrow payments, or purchasing other services associated with most residential real estate transactions.[3] RESPA section 8(a)[4] provides that no person[5] shall give and no person shall accept any fee, kickback, or thing of value[6] pursuant to any agreement or understanding,[7] oral or otherwise, that business incident to or a part of a real estate settlement service[8] involving a federally related mortgage loan[9] shall be referred[10] to any person. While RESPA section 8(a) prohibits referral fees, RESPA section 8(c) provides that bona fide payments for goods or facilities provided or services rendered (which do not include payments for referral fees) are not prohibited by RESPA section 8.[11]

RESPA and its implementing Regulation X[12] have been in effect for nearly a half century. One of the reasons for RESPA's enactment in 1974 was congressional concern over excessive settlement costs. Congress found that ''significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation . . . are protected from unnecessarily

[1] 85 FR 77987 (Dec. 3, 2020).

[2] 12 U.S.C. 2601 *et seq.*

[3] *See generally* 12 U.S.C. 2601 *et seq.* and Regulation X, 12 CFR part 1024. Certain RESPA and Regulation X provisions address mortgage servicing and escrow issues (*e.g.,* 12 U.S.C. 2605), which are not the subject of this Advisory Opinion.

[4] 12 U.S.C. 2607(a). Regulation X, 12 CFR 1024.14(b), implements RESPA section 8(a)'s prohibition.

[5] *See* 12 U.S.C. 2602(5) (statutory definition of ''person'').

[6] *See* 12 CFR 1024.14(d) (regulatory definition of ''thing of value'').

[7] *See* 12 CFR 1024.14(e) (regulatory definition of ''agreement or understanding'').

[8] *See* 12 CFR 1024.2(b) (defining settlement service as ''any service provided in connection with a prospective or actual settlement'' and providing 15 non-exhaustive examples). The regulatory definition is based on the broad statutory definition of settlement services in 12 U.S.C. 2602(3).

[9] 12 U.S.C. 2602(1). As the TILA–RESPA Integrated Disclosure rule summarized, a federally related mortgage loan ''is broadly defined to encompass virtually any purchase money or refinance loan, with the exception of temporary financing, that is 'secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families.' '' 78 FR 79730, 79736 (Dec. 31, 2013) (quoting 12 U.S.C. 2602(1)). The term federally related mortgage loan also includes certain other loans, such as reverse mortgages and home equity loans and lines of credit, that meet the other criteria of the definition.

[10] *See* 12 CFR 1024.14(f) (regulatory definition of ''referral'').

[11] 12 U.S.C. 2607(c)(2) (''Nothing in this section shall be construed as prohibiting . . . the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed''); *accord* 12 CFR 1024.14(g)(1)(iv) (''Section 8 of RESPA permits . . . [a] payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed. . . .'').

[12] 12 CFR part 1024.

high settlement charges caused by certain abusive practices that have developed in some areas of the country.'' [13] Among the RESPA statutory purposes is the ''elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services.'' [14] Congressional committee reports noted that kickbacks for the referral of settlement service business were a common practice in the real estate industry and cited payments for referrals of settlement services as a factor in the inflated prices for those services.[15]

Further, Congress in 1983 amended RESPA to permit what are now called affiliated business arrangements subject to certain conditions.[16] In doing so, Congress recognized that settlement service providers engage in reverse competition for their business—that is, they do not compete for a consumer's business directly, but rather compete for and almost exclusively rely on referrals from, *e.g.,* real estate brokers or lenders—and that this dynamic can have deleterious effects on consumers and markets beyond higher settlement costs.[17] One court, citing the legislative and regulatory history concerning the affiliated business arrangement provisions, noted that ''RESPA's overarching goal'' was to ''mitigat[e] market-distorting practices.'' [18] Consistent with the notion that RESPA section 8 addresses consumer harms beyond settlement cost increases, Regulation X provides that a RESPA section 8 violation can occur even if the consumer's settlement costs do not increase.[19]

2. Digital Mortgage Comparison-Shopping Platforms

RESPA section 8 applies broadly, and in many circumstances covers conduct by persons who connect settlement service providers to consumers who may be interested in purchasing a home, applying for a mortgage, or otherwise using a settlement service provider in a RESPA-covered transaction. This may include selling the consumer's contact information (*i.e.,* leads) to settlement service providers. Leads are increasingly sold through a variety of digital platforms and related business agreements.

In particular, some digital platforms are structured as consumer-facing websites or online applications that allow consumers to search for and compare options for mortgages or other settlement services.[20] These digital platforms—in some cases called ''online marketplaces''—can facilitate a consumer's choice among alternative products or settlement service providers and may be operated by settlement service providers or third parties.[21] Through their interaction with these digital platforms, consumers often provide their contact information to set up an account, and sometimes they may provide additional information that is typically part of a mortgage application or fill out an online long form. The platform operator then purports to use the consumer's information to help the consumer compare a range of options to find a suitable lender or other settlement service provider that the consumer can contact. The platforms typically will generate leads for the participating lender or other settlement service provider by facilitating the consumer's click-through to the website of the participating provider, selling the consumer's contact information to the provider, or both. The comparison information may be presented to the consumer viewing the platform in a static or interactive format. In the latter case, the platform may give consumers the ability to sort the options or rankings based on different criteria or to customize the presentation of options or rankings based on factors they can select (sometimes after default options or rankings are presented). Digital platforms may also combine online marketplace and lead generation activities with other services, such as advertising to consumers.

This Advisory Opinion focuses on digital platforms that include information or features that enable consumers to comparison shop options for mortgages and other settlement services, including those platforms that generate potential leads for the platform participants through consumers' interaction with the platform (Digital Mortgage Comparison-Shopping Platforms). Digital Mortgage Comparison-Shopping Platforms generally are covered by a 1996 policy statement issued by the Department of Housing and Urban Development (HUD) on ''computer loan origination systems,'' or CLOs (HUD CLO Policy Statement),[22] which the CFPB has applied, as relevant, since 2011, when Congress transferred responsibility for RESPA to the CFPB from HUD.[23]

[13] 12 U.S.C. 2601(a).

[14] 12 U.S.C. 2601(b)(2).

[15] *See* H.R. Rep. No. 93–1177, at 7 (1974) and S. Rep. No. 93–866, at 6 (1974) (providing examples where the payment or other thing of value furnished by the person to whom the settlement business is referred tended to increase the cost of settlement services without providing any benefits to the homebuyer, and noting that ''[w]hile the making of such payments may heretofore have been necessary from a competitive standpoint in order to obtain or retain business, and in some areas may even be permitted by state law, it is the intention of [this] section . . . to prohibit such payments, kickbacks, rebates, or unearned commissions'').

[16] Housing and Urban-Rural Recovery Act of 1983, Public Law 98–181, section 461, 97 Stat. 1155, 1230 (1983) (codified as amended at 12 U.S.C. 2607(c)(4)).

[17] As explained in a House Committee Report: ''[T]he advice of a person making the referral may lose its impartiality and may not be based on his professional evaluation of the quality of service provided if the referror or his associates have a financial interest in the company being recommended.'' H.R. Rep. No. 97–532, at 52 (1982). The 1983 RESPA amendments addressed questions following RESPA's enactment about ''the legality of more sophisticated transactions where . . . there was a less obvious causal link between the referral and the payment.'' *Minter* v. *Wells Fargo Bank, N.A.,* 274 FRD. 525, 536 (D. Md. 2011). This arose most frequently within the context of what were then called ''controlled business arrangements'' where ''one provider of one settlement service maintained an enhanced relationship with a second provider of a different settlement service, through which each service provider captured the clients of the other.'' *Id.*

[18] *Id.* at 538–39; *see also Baehr* v. *Creig Northrop Team,* 953 F.3d 244, 253–56 & n.7 (4th Cir. 2020) (finding that ''deprivation of impartial and fair competition between settlement services providers'' was not sufficient to confer standing on a private litigant under RESPA section 8's statutory purposes in absence of increased settlement costs, but noting that increased settlement costs were not a requirement for a statutory violation and that governmental entities are not bound to the same standing constraints as private litigants).

[19] *See* 12 CFR 1024.14(g)(2) (''The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.'').

[20] *See* Rory Van Loo, *Rise of the Digital Regulator,* 66 Duke L.J. 1267, 1281 (2017) (describing how ''digital intermediaries'' can list mortgage options from specific financial institutions, permit consumers to use mortgage calculators, or allow consumers to input information to generate a response as to whether they should refinance).

[21] *See* Miriam Cross, *Bank comparison sites recast themselves, with celeb help and new services,* Am. Banker (Aug. 9, 2022) (describing how ''[o]nline marketplaces have revamped their branding or adapted their strategy over the course of the pandemic to maintain financial institution partnerships and meet new customer needs'' and noting that ''[b]anks and lenders are closely intertwined with these platforms'').

[22] HUD, *RESPA Statement of Policy 1996–1, Regarding Computer Loan Origination Systems (CLOs),* 61 FR 29255 (June 7, 1996). The HUD CLO Policy Statement was issued as part of a broader set of HUD regulations and interpretations that addressed employer-to-employee payments. *See* 61 FR 29238 (June 7, 1996). Because some of these regulations and interpretations were never finalized, *see* 61 FR 58472 (Nov. 15, 1996), certain aspects of the HUD CLO Policy Statement not relevant to this Advisory Opinion—for example, section 4, addressing ''Payments of Commissions or Bonuses to Employees''—were not made effective by HUD and would not be applied by the CFPB. *See id.* at 58473.

[23] *See* 12 U.S.C. 5581(b)(7). When the CFPB assumed jurisdiction over the enumerated consumer laws in the Dodd-Frank Act on the designated transfer date, it issued a rule identifying the enforceable rules and orders from transferor agencies. The preamble to that rule explained that

Continued

3. HUD CLO Policy Statement

The HUD CLO Policy Statement defined a CLO as ''a computer system that is used by or on behalf of a consumer to facilitate a consumer's choice among alternative products or settlement service providers in connection with a particular RESPA-covered real estate transaction'' and gave seven examples of CLO system functions.[24] The description of CLOs in the HUD CLO Policy Statement was ''not meant to be restrictive or exhaustive'' and ''merely attempt[ed] to describe existing practices of service providers,'' and the HUD CLO Policy Statement elaborated that with the ''use of technology evolving so rapidly,'' it is difficult ''to provide guidance on future unspecified practices in the abstract.'' [25] Based on the HUD CLO Policy Statement's description of CLOs, which expressly left room for platform evolution, Digital Mortgage Comparison-Shopping Platforms are a type of CLO.[26] Further, for clarity, this Advisory Opinion sometimes refers to the person that receives payment from participants on a Digital Mortgage Comparison-Shopping Platform as the ''Operator.'' [27]

The HUD CLO Policy Statement noted that settlement service providers ''may pay CLOs a reasonable fee for services provided by the CLO to the settlement service provider, such as, having information about the provider's products made available to consumers for comparison with the products of other settlement service providers.'' [28] Moreover, ''if a CLO lists only one settlement service provider and only presents basic information to the consumer on the provider's products, then there would appear to be no or nominal compensable services provided by the CLO to either the settlement service provider or the consumer, only a referral''; thus, ''any payment by the settlement service provider for the CLO listing could be considered a referral fee in violation of section 8 of RESPA.'' [29] The HUD CLO Policy Statement, further, noted that ''favoring one settlement service provider over others may be affirmatively influencing the selection of a settlement service provider'' and that ''if one lender always appears at the top of any listing of mortgage products and there is no real difference in interest rates and charges between the products of that lender and other lenders on a particular listing, then this may be a non-neutral presentation of information which affirmatively influences the selection of a settlement service provider.'' [30] The HUD CLO Policy Statement also noted that the statement ''should not be read to discourage CLOs from assisting consumers in determining which products are most advantageous to them'' and that if, for example, ''a CLO consistently ranks lenders and their mortgage products on the basis of some factor relevant to the borrower's choice of product, such as APR [annual percentage rate] calculated to include all charges and to account for the expected tenure of the buyer, HUD would consider this practice as a neutral display of information.'' [31]

The HUD CLO Policy Statement further noted that ''if a CLO charges different fees to different settlement service providers in similar situations, an incentive may exist for the CLO to steer the consumer to the settlement service provider paying the highest fees,'' which could lead to RESPA violations.[32] HUD's concern over 26 years ago about steering was both compelling and prescient. Based on the evolution of business arrangements and technology platforms, the CFPB's market monitoring, and regulator activity, the CFPB understands that operators of Digital Mortgage Comparison-Shopping Platforms and participating settlement service providers in some cases may be engaging in activities that violate RESPA section 8.

In this Advisory Opinion, the CFPB is addressing, as a general matter, certain circumstances in which payments received by Operators from settlement service providers for participating on Digital Mortgage Comparison-Shopping Platforms violate RESPA section 8. This Advisory Opinion also identifies additional, illustrative examples of Digital Mortgage Comparison-Shopping Platforms that involve RESPA section 8 violations. The CFPB, finally, briefly discusses the potential applicability of other consumer-protection laws and regulations.

B. Scope of Coverage

This Advisory Opinion applies to any ''person'' to which RESPA section 8's prohibitions apply. RESPA defines ''person'' to include individuals, corporations, associations, partnerships, and trusts.[33] RESPA does not apply to extensions of credit to government or governmental agencies or instrumentalities.[34] It also does not apply to extensions of credit primarily for business, commercial, or agricultural purposes.[35]

C. Legal Analysis

1. Interpretation of RESPA Section 8

An operator of a Digital Mortgage Comparison-Shopping Platform receives a prohibited referral fee in violation of RESPA section 8 when: (1) the Digital Mortgage Comparison-Shopping Platform non-neutrally uses or presents information about one or more settlement service providers participating on the platform; (2) that non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise

''official commentary, guidance, and policy statements'' previously issued by transferor agencies with exclusive rulemaking authority over the law in question, including RESPA, ''will be applied by the CFPB pending further CFPB action.'' 76 FR 43569, 43570 (July 21, 2011) (Transfer of Authorities Rule). The CFPB also wrote that it ''will seek over time to improve the clarity and uniformity of guidance regarding the laws it will administer as necessary . . . to facilitate compliance with the Federal consumer financial laws.'' *Id.* Although the CFPB considers this Advisory Opinion to be ''further CFPB action'' as such term was used in the Transfer of Authorities Rule, this Advisory Opinion is intended to supplement the HUD CLO Policy Statement, rather than supersede it. The CFPB will continue to apply the HUD CLO Policy Statement, as relevant, pending further CFPB action.

[24] 61 FR 29255, 29256 (June 7, 1996) (''Such a computer system: (1) may provide information concerning products or services; (2) may pre-qualify a prospective borrower; (3) may provide consumers with an opportunity to select ancillary settlement services; (4) may provide prospective borrowers with information regarding the rates and terms of loan products for a particular property in order for the borrower to choose a loan product; (5) may collect and transmit information concerning the borrower, the property, and other information on a mortgage loan application for evaluation by a lender or lenders; (6) may provide loan origination, processing, and underwriting services, including but not limited to, the taking of loan applications, obtaining verifications and appraisals, and communicating with the borrower and lender; and (7) may make a funding decision.'').

[25] *Id.*

[26] The CFPB recognizes that the platforms will continue to evolve as technology and business arrangements continue to evolve. Thus, similar to the HUD CLO Policy Statement's approach when defining the term CLO, the CFPB intends the term Digital Mortgage Comparison-Shopping Platform to be flexible and non-exhaustive.

[27] For purposes of this Advisory Opinion, a payment or other thing of value would be considered to be received from a settlement service provider participating on a Digital Mortgage Comparison-Shopping Platform even if it is provided to the Operator by another person on behalf of the participating provider, rather than directly by the participating provider.

[28] 61 FR 29255, 29257 (June 7, 1996).

[29] *Id.* at 29256. Depending on the facts and circumstances, such a payment could also violate RESPA section 8(b), which prohibits splitting charges made or received for settlement services, except for services actually performed, in connection with a federally related mortgage loan. *See* 12 U.S.C. 2607(b), 12 CFR 1024.14(c).

[30] 61 FR 29255, 29258 (June 7, 1996).

[31] *Id.*

[32] *Id.* at 29257.

[33] 12 U.S.C. 2602(5).

[34] 12 U.S.C. 2606(a)(2).

[35] 12 U.S.C. 2606(a)(1). Regulation X, 12 CFR 1024.5, provides additional limits on the coverage of RESPA.

affirmatively influences the selection of, those settlement service providers, thus constituting referral activity; and (3) the Operator receives a payment or other thing of value that is, at least in part, for that referral activity. By non-neutrally using or presenting information, the Operator impedes the consumer's ability to engage in meaningful comparison of options and, instead, preferences certain options over others or presents options for reasons other than presenting them based on neutral criteria such as APR, objective consumer satisfaction information, or factors the consumer selects for themselves to rank or sort the settlement service providers on the platform.[36] In these instances, the payment received by the Operator for such preferences or presentation of options is not merely for compensable services; instead, it is, at least in part, for referral activity.[37] Further, when the Operator receives a higher fee for including one settlement service provider than it receives for including other settlement service providers participating on the same platform, that can be evidence of an illegal referral fee arrangement, absent other facts indicating that the payment is not for enhanced placement or other form of steering; see further explanation and illustrative examples below.

[36] *See* 61 FR 29255, 29258 (June 7, 1996). Although these are examples of information that Operators may be using or presenting with regard to Digital Mortgage Comparison-Shopping Platforms in today's market, the Bureau emphasizes that this Advisory Opinion implicates the *manner* in which an Operator uses and presents information, not *what* information an Operator must or must not use or present. Moreover, the CFPB notes that presenting comparable options based on neutral criteria (*e.g.,* listing lenders with the lowest to highest APR in ascending order) would be a neutral presentation of information.

[37] The CFPB is aware that some Digital Mortgage Comparison-Shopping Platforms contain certain disclosures addressing how the participating settlement service providers' information is used and presented. While it may be a best practice for an Operator to disclose clearly and prominently how it is using and presenting the information of platform participants—for compliance with the prohibition on unfair, deceptive, or abusive acts or practices (UDAAPs), 12 U.S.C. 5531, 5536(a)(1)(B), or for other reasons—a disclosure would not, absent other facts, turn a directed action that has the effect of affirmatively influencing into one that does not. Unlike RESPA section 8(c)(4)—where giving a disclosure along with meeting other specified conditions would allow for referrals to be made and a return on an ownership interest or franchise relationship to be received under the ambit of an affiliated business arrangement—a disclosure does not cure what would otherwise be a RESPA section 8(a) or 8(b) violation. *See HUD RESPA Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers,* 64 FR 10080, 10087 (Mar. 1, 1999) (''[D]isclosure alone does not make illegal fees legal under RESPA.'').

a. RESPA Section 8(a)

When a Digital Mortgage Comparison-Shopping Platform Operator non-neutrally uses or presents information and that has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, a settlement service provider, the Operator is making a referral. Under Regulation X, the term ''referral'' is defined as ''any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.'' [38] Steering is a form of referral because it is an action directed to a person [39] that exerts affirmative influence.[40]

The Operator can steer or otherwise affirmatively influence the consumer to select certain platform participants by non-neutrally *using* information to generate the comparison options. Non-neutral use of information involves manipulation or biasing of the inputs or formula that the Operator employs to generate the comparison options before they are presented to the consumer. This can happen in a variety of ways. For example, some Digital Mortgage Comparison-Shopping Platforms allow consumers to generate comparison options based on purportedly objective criteria specified by the Operator (*e.g.,* lower interest rate, superior customer service). In this scenario, the Operator would non-neutrally use information if it were to set the formula to boost the rankings of lenders who pay more to participate on the platform by, behind the scenes, excluding or placing low weight on the purportedly objective comparison criteria that would otherwise favor the lower-paying provider. Another example involves a platform that seeks—and purports to incorporate into the formula used to generate comparison results—the consumer's preferences regarding the factors that are most important to them in choosing a settlement service provider. In that scenario, the Operator could manipulate the formula to favor certain participating providers by declining to honor the consumer's preferences or unwarrantedly placing weight on inaccurate information about the provider (*e.g.,* giving credit in the formula to a lender for more favorable interest rates that the Operator knows are outdated, which ensures that lender will have a higher ranking under the formula).

The Operator also can steer or otherwise exert affirmative influence by non-neutrally *presenting* information about comparison options to the consumer while the consumer is interacting with a Digital Mortgage Comparison-Shopping Platform.[41] The Operator could do this in several ways, including through subtle actions that bias the presentation for the consumer. For example, an Operator could provide the names and telephone numbers of all participating providers but only provide weblinks for a subset of higher-paying providers. Alternatively, the Operator might list the lenders that pay more to the Operator on the first page and rank them by interest rate—so the platform appears to have ranked *all* participants by that factor—while at the same time showing on the second page other participants with the same or lower interest rates but that pay less to the Operator. Another example is if an Operator: permits a consumer to generate a presentation of ranked lender options; receives a higher fee if the consumer clicks on the top-ranked

[38] 12 CFR 1024.14(f)(1). To qualify as a ''referral,'' the oral or written action at issue need not be directed to a person that is a consumer. Rather, it might be directed to a variety of persons, such as appraisers, real estate agents, title companies and agents, lenders, mortgage brokers, or other companies that provide information in connection with settlements, such as credit reports and flood determinations. *See* 12 CFR 1024.14(b) and (f).

[39] Based on the CFPB's understanding of how consumers interact with Digital Mortgage Comparison-Shopping Platforms in the market today, the Operator will typically take action that is ''directed to a person.'' For example, if the consumer makes a request of the platform to run a search of comparison options, sort the comparison options into different categories, or use the consumer's preferences to generate or refine the comparison options, the Operator's response to the consumer's request is an action ''directed to a person,'' *i.e.,* the consumer. 12 CFR 1024.14(f)(1).

[40] *See Wilborn* v. *New Century Mortg. Corp.,* No. C 08–5044 JL, 2009 WL 10695188, at *6 (N.D. Cal. Apr. 29, 2009) (noting that RESPA section 8 in general ensures that ''fees or commissions are not kickbacks for steering business to a particular lender''); Paul Barron et al., 1 *Fed. Reg. of Real Estate & Mortgage Lending* section 2:51 (4th ed. Sept. 2022 update) (treatise excerpt explaining that the HUD CLO Policy Statement reflects HUD's concern that ''i[f] there is steering, the implication is that the settlement service provider to whom the consumer is steered is paying a referral fee'').

[41] The CFPB emphasizes that the distinction between non-neutral *use* and *presentation* of information is not binary. For example, Digital Mortgage Comparison-Shopping Platforms with more interactive elements—where consumers can sort options by different categories, indicate preferences which will affect the generation of comparison options, or generate multiple sets of comparison options—will involve both the use and presentation of information, often in rapid succession. The distinction is intended to elucidate the legal interpretation rather than suggest that there is a rigid delineation as an operational or practical matter.

lender compared with the other lenders; and segregates and highlights prominently the top-ranked option but presents the other options in very small font requiring the consumer to scroll down.[42] Another example is if the Operator labels a lender that appears within, and at or near the top of, the platform's rankings as a ''sponsored lender,'' ''featured lender,'' or similar phrase because the lender has paid for enhanced placement, but nonetheless designs the platform and displays the lender in a manner that implies the lender earned its placement within the platform's rankings based on neutral criteria. Alternatively, the Operator could list the same participant who has paid for enhanced placement multiple times in the rankings, using either the same name or an affiliated name. Another example would be where a consumer visits a Digital Mortgage Comparison-Shopping Platform and runs an initial search of comparison options which yields a ''top-ranked lender'' and other lenders, but when revisiting the platform, the consumer only sees that ''top-ranked'' lender based on the Operator and lender's agreement to show only that lender when the consumer revisits the platform. This action prevents the consumer from using the platform for comparison shopping based on neutral criteria and boosts the likelihood the consumer will choose that lender over other options.

Through all these actions, the Operator non-neutrally presents information to increase the odds that the consumer will select the lender who pays more, as opposed to other options that are similarly suitable or even better for the consumer. The HUD CLO Policy Statement recognized that these types of non-neutral presentations (which it sometimes called ''non-neutral displays'') of information on a CLO platform may constitute a referral.[43] The illustrative examples in section I.C.2 of this Advisory Opinion highlight other ways in which an Operator non-neutrally uses or presents information.

By non-neutrally using or presenting information on a Digital Mortgage Comparison-Shopping Platform, the Operator is putting a thumb on the scale. Consequently, the Operator is no longer merely providing the most basic function of a Digital Mortgage Comparison-Shopping Platform, which was identified in the HUD CLO Policy Statement—''having information about the provider's products made available to consumers for comparison with the products of other settlement service providers.'' [44] Instead, the Operator is receiving payment for steering or otherwise affirmatively influencing the consumer, which constitutes a referral. This activity could also potentially implicate the Dodd-Frank Act's prohibition on unfair, deceptive, or abusive acts or practices (UDAAPs).[45]

In addition to the element of referral, a RESPA section 8(a) violation occurs when two other elements are present: a thing of value, and an agreement or understanding. Thing of value is defined in Regulation X broadly and non-exhaustively.[46] The term ''thing of value'' would include payments received by the Operator under a contractual agreement for the settlement service provider to participate on the platform where referrals are being generated for the settlement service provider. Furthermore, if the settlement service provider receives enhanced, non-neutral placement on a Digital Mortgage Comparison-Shopping Platform, there presumably would be an express agreement or understanding to pay for that enhanced placement. Even if there is not such an express agreement or understanding for the enhanced placement, because the Operator is providing the participating settlement service providers with access to a Digital Mortgage Comparison-Shopping Platform that non-neutrally uses or presents information and results in steering or other affirmative influence (as discussed above), it is likely that an agreement or understanding for referrals can be established under Regulation X through a pattern, practice, or course of conduct.[47]

b. RESPA Section 8(c)(2)

RESPA section 8(c)(2) provides that section 8 of RESPA does not prohibit ''the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.'' [48] Regulation X further clarifies RESPA section 8(c)(2). It provides that ''[i]f the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided.'' [49] Regulation X also provides that ''[t]he value of a referral (*i.e.,* the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services.'' [50] Moreover, under Regulation X, ''[t]he fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.'' [51]

RESPA section 8(c)(2) does not provide a defense to payment of referral fees because referrals are not compensable services under RESPA.[52] As described above, when (1) a Digital Mortgage Comparison-Shopping Platform non-neutrally uses or presents information about one or more settlement service providers participating on the platform, (2) that non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, those settlement service providers, thus constituting referral activity, and (3) the Operator receives a payment or other thing of value that is, at least in part, for that referral activity, the Operator is receiving a payment that is not merely for compensable services. Consequently,

[42] *See* 61 FR 29255, 29257 (June 7, 1996).

[43] *See id.* at 29258.

[44] *Id.* at 29257.

[45] 12 U.S.C. 5531, 5536(a)(1)(B).

[46] *See* 12 CFR 1024.14(d); *see also Edwards* v. *First Am. Corp.,* 798 F.3d 1172, 1179 (9th Cir. 2015) (''[A]n exchange of a 'thing of value' is used as synonymous with a payment and does not require a transfer of money.'').

[47] *See* 12 CFR 1024.14(e). Where the elements of a RESPA section 8 violation are otherwise satisfied, it is no defense that a Digital Mortgage Comparison-Shopping Platform's non-neutral use or presentation of information was allegedly the product of a complex algorithm. Operators are expected to know whether their platform uses or presents information in a non-neutral manner, even if the platform may employ complex algorithms in using or presenting the information. *See generally* Consumer Financial Protection Circular 2022–03, *Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms,* 87 FR 35864 (June 14, 2022) (''A creditor cannot justify noncompliance with ECOA and Regulation B's requirements based on the mere fact that the technology it employs to evaluate applications is too complicated or opaque to understand.''). Moreover, when structuring or implementing a contractual agreement to participate on a Digital Mortgage Comparison-Shopping Platform that results in steering or other affirmative influence based on non-neutral criteria, settlement service providers likely would know that the Operator is non-neutrally using or presenting information.

[48] 12 U.S.C. 2607(c)(2); *accord* 12 CFR 1024.14(g)(1)(iv).

[49] 12 CFR 1024.14(g)(2); *see also O'Sullivan* v. *Countrywide Home Loans, Inc.,* 319 F.3d 732, 739 (5th Cir. 2003) (explaining that this provision ''was promulgated for the purpose of assisting courts in ferreting out kickbacks disguised as legitimate payments for goods and services in complex real estate settlement transactions'').

[50] 12 CFR 1024.14(g)(2).

[51] *Id.*

[52] *See* HUD, *Real Estate Settlement Procedures Act (RESPA): Home Warranty Companies' Payments to Real Estate Brokers and Agents,* 75 FR 36271 (June 25, 2010) (distinguishing where home warranty companies could legally pay real estate brokers for services versus where such payments were non-compensable referral fees).

the Operator is not only providing what the HUD CLO Policy Statement described as a CLO operator's compensable service of ''having information about the provider's products made available to consumers for comparison with the products of other settlement service providers'' [53] or other compensable services. Rather, as described above, the Operator is being paid, at least in part, for conduct that has the effect of steering or otherwise affirmatively influencing the consumer to select a provider on the platform. Yet, Regulation X does not permit the value of the referral to be taken into account when determining the reasonable value of the services under RESPA section 8(c)(2).[54]

In contrast, an Operator that receives payment from settlement service providers for their participation on a Digital Mortgage Comparison-Shopping Platform that both neutrally uses and neutrally presents information is receiving payment for compensable services,[55] and thus would be compliant with RESPA section 8, assuming no other facts were present that would call such RESPA section 8 compliance into question.[56]

c. HUD CLO Policy Statement

The HUD CLO Policy Statement, as noted above, cautioned that differential payments by settlement service providers (*e.g.,* lenders) participating on CLO platforms create steering incentives that could lead to RESPA violations.[57] When examining the fees received by an Operator from similarly situated settlement service providers that participate on the same Digital Mortgage Comparison-Shopping Platform, a fee differential can be evidence of an illegal referral fee arrangement. The reason is commonsensical. If the Operator receives a higher fee from one settlement service provider than another for participating on the same Digital Mortgage Comparison-Shopping Platform, and if the higher-paying settlement service provider is, in fact, also receiving enhanced placement on the platform, then it is reasonable to infer that the settlement service provider is paying for the enhanced placement on the platform rather than merely the compensable service of ''having information about the provider's products made available to consumers for comparison with the products of other settlement service providers'' [58] or other compensable services. The higher charge paid by some providers thus can be ''evidence of a violation of section 8,'' [59] absent other facts indicating that the payment is not for enhanced placement or other form of steering.

Notwithstanding the CLO Policy Statement's language about *differential* fees, if (1) a Digital Mortgage Comparison-Shopping Platform's non-neutral use or presentation of information has the effect of steering the consumer to use, or otherwise affirmatively influences the selection of, one or more settlement service providers participating on the platform, and therefore constitutes referral activity, and (2) the Operator receives a payment for including participating settlement service providers on the platform that is, at least in part, for those referrals, then the Operator's actions would violate RESPA section 8 even if the Operator were to receive the *same fee* from each provider (or from some, but not all, providers). Although the HUD CLO Policy Statement noted the potential for steering and described how a RESPA violation could occur if different settlement service providers were paying different fees for participating on the same CLO system,[60] the HUD CLO Policy Statement did not identify that scenario as the only problematic one under RESPA section 8 with respect to CLOs.[61] By steering the consumer to particular settlement service providers, even where the fees paid by those providers are the same as one another, the Operator is providing a different—and non-compensable—service from those identified as compensable under the HUD CLO Policy Statement, including ''having information about the provider's products made available to consumers for comparison with the products of other settlement service providers.'' [62] See sections I.C.2.b and I.C.2.e below for examples illustrating where a Digital Mortgage Comparison-Shopping Platform refers consumers to participating settlement service providers and where the Operator receives illegal referral fees, even if those fees do not differ among the participating providers.

The HUD CLO Policy Statement also noted that no compensable services would be present if a CLO were to list only one settlement service provider and only present basic information to the consumer on the provider's products.[63] As noted above, the HUD CLO Policy Statement described as compensable services a CLO operator's ''having information about the provider's products made available to consumers for comparison with the products of other settlement service providers.'' [64] For these particular CLO services to be compensable, a range of options must be presented to the consumer. RESPA section 8 does not require a particular numerical threshold, but in general, presenting a greater number of comparison options rather than fewer makes it less likely that the Operator is steering the consumer to one or more settlement service providers.

2. Examples of Digital Mortgage Comparison-Shopping Platforms Violating RESPA Section 8

Below are examples of Digital Mortgage Comparison-Shopping Platforms where, based on the interpretation above, the CFPB would find that there is a RESPA section 8 violation. The CFPB emphasizes that these examples are illustrative and non-exhaustive.

a. Pay To Play and Steering to Highest Bidder

In an example of conduct that would violate RESPA section 8, assume the Operator permits the consumer to input

[53] 61 FR 29255, 29257 (June 7, 1996).

[54] 12 CFR 1024.14(g)(2).

[55] As noted above, an example of a neutral presentation of information would be a platform that lists participating lenders with the lowest to highest APR in ascending order. *See supra* note 36.

[56] Similarly, advertising arrangements where actual services are being provided and reasonable payment is being received are compensable services under RESPA section 8 depending on the facts and circumstances. *See* 12 U.S.C. 2607(c)(2). *Cf.* CFPB Real Estate Settlement Procedures Act FAQs, *RESPA Section 8: Marketing Services Agreements (MSAs),* no. 2, *https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/real-estate-settlement-procedures-act/real-estate-settlement-procedures-act-faqs/* (explaining that ''[w]hether a particular activity is a referral or a marketing service is a fact-specific question,'' and noting that a marketing service, in contrast to a referral, ''is not directed to a person'' but instead ''is generally targeted at a wide audience''—*e.g.,* ''placing advertisements . . . in widely circulated media'' such as ''a newspaper, a trade publication, or a website'').

[57] 61 FR 29255, 29257 (June 7, 1996). As noted above, the CFPB has applied the HUD CLO Policy Statement since the CFPB's designated transfer date under the Dodd-Frank Act, and the CFPB will continue to apply the HUD CLO Policy Statement, as relevant, pending further CFPB Action. *See supra* note 23.

[58] *Id.*

[59] 12 CFR 1024.14(g)(2) (providing that fees in excess of reasonable market value can be evidence of a RESPA section 8 violation).

[60] *See* 61 FR 29255, 29257 (June 7, 1996).

[61] The CFPB also emphasizes that there is no ''market'' value to be ascribed to a referral, since a referral is not compensable under RESPA section 8. *See* 12 CFR 1024.14(g)(2) (''The value of a referral (*i.e.,* the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services.'').

[62] 61 FR 29255, 29257 (June 7, 1996).

[63] *Id.* at 29256.

[64] *Id.* at 29257.

relevant information on the Digital Mortgage Comparison-Shopping Platform to aid in the consumer's search for mortgage options (*e.g.,* location, anticipated loan amount, credit score) and represents that the platform will use the information to identify the ''best match.'' Assume further that the platform presents a purported ''best match'' lender to the consumer, or ranks the lenders, but skews the results of the comparison function to ensure that the ''best match'' is the highest bidding lender participating on the platform. Such conduct would violate RESPA section 8 because here, the Operator non-neutrally uses information to preference the highest bidding lender, resulting in the Operator steering the consumer to that lender. The Operator's actions imply an endorsement by leading the consumer to believe that the Operator did an analysis behind the scenes (possibly driven by an algorithm) to determine the most suitable lender for the consumer—which thereby influences the consumer to select that lender.[65] Furthermore, for the reasons described in section I.C.1.b above, the Operator is not merely receiving a bona fide payment for services under RESPA section 8(c)(2). The CFPB notes that this example could also potentially implicate the prohibition against UDAAPs, particularly if the Digital Mortgage Comparison-Shopping Platform were to contain misrepresentations about the accuracy of the information on the platform (including about the objectivity of the rankings).[66] Deceptive misrepresentations could serve to accentuate the affirmative influence noted above.

b. Payments Only From and Promotion of Lenders Who Rotate in Top Spot

A variation of the previous scenario involves a Digital Mortgage Comparison-Shopping Platform that allows consumers to input information about their needs and then to generate lender rankings, but where all lenders participating on the platform take turns appearing in the top spot randomly or based on a predetermined schedule, *i.e.,* the rankings do not reflect a tailoring to the consumer's needs based on their inputted information. Moreover, assume that the Operator is paid by only the lender appearing in the top spot or that lenders pay in advance for the opportunity to appear in the top spot randomly or based on the predetermined schedule. This example involves a referral because a consumer would reasonably perceive that, after entering information about their needs and using the platform to call up a ranking of participating lenders, the lender appearing in the top spot would be the one determined by the Operator to be best suited to the consumer's needs, not the lender who is next in a round robin. For reasons similar to those described in section I.C.1.b, the Operator is not merely receiving a bona fide payment for services under RESPA section 8(c)(2), and this scenario likewise would also raise UDAAP concerns. The payment would be considered a referral fee even if it does not differ from the payments made by other lenders participating in the round robin.

c. Preferencing Platform Participants That Are Affiliates

In another scenario, assume that a Digital Mortgage Comparison-Shopping Platform is designed and operated in a manner that steers consumers to use settlement service providers that are affiliates of the Operator. For example, assume that a mortgage lender develops a Digital Mortgage Comparison-Shopping Platform permitting consumers to search information about and view rankings of comparable mortgage brokers and that the platform includes both affiliated and non-affiliated mortgage brokers. However, the mortgage lender/Operator manipulates the application of the ranking criteria so that its affiliated mortgage brokers appear higher than the non-affiliated mortgage brokers. The Operator receives payment for the higher ranking of affiliated mortgage brokers. In this scenario, the Operator's receipt of payments from the affiliated mortgage brokers for the higher ranking would violate RESPA section 8. A platform that preferences affiliated settlement service providers non-neutrally uses or presents information. Therefore, the Operator is affirmatively influencing the consumer's selection of the providers on the platform and is referring the consumer, and the Operator is receiving payment for the preferential treatment, *i.e.,* the referral.

This fact scenario may also implicate the RESPA section 8(c)(4) provisions regarding affiliated business arrangements.[67] Whether a particular arrangement is an affiliated business arrangement would depend on various factors, including the nature of the relationship between the parties and whether the Operator is ''in a position to refer [settlement service] business.''[68] In theory, the Operator could follow the conditions for affiliated business arrangements and then claim that the platform is permissible under RESPA section 8. However, other than payments separately permitted under RESPA section 8(c), the only ''thing of value'' persons in an affiliated business arrangement may receive is a return on ownership interest (or franchise relationship).[69] In the scenario described above, the Operator would be receiving a thing of value other than payments separately permitted under RESPA section 8(c) or a return on an ownership interest (or franchise relationship).[70] Furthermore, for reasons similar to the other examples, that payment would not be merely for compensable services under RESPA section 8(c)(2). Thus, the RESPA affiliated business arrangement provisions would not permit this arrangement.

d. Additional Services That Promote Platform Participant

In another example, assume an Operator designs a Digital Mortgage Comparison-Shopping Platform that gathers the consumer's contact information and permits the consumer to generate a ranking of lender options based on criteria selected by the consumer. The ranking reflects neutral use and display of information. Assume, further, that the Operator also contracts with one of the participating lenders

[65] An endorsement is an example of an action that exerts ''affirmative influenc[e]'' within the meaning of 12 CFR 1024.14(f)(1)'s definition of ''referral.'' *See NewDay Fin., LLC,* File No. 2015–CFPB–0004, at 6–8 (Feb. 10, 2015) (consent order), *https://files.consumerfinance.gov/f/201502_cfpb_consent-order_newday-financial.pdf.*

[66] *See* Fed. Trade Comm'n, Policy Statement on Deception (Oct. 14, 1983), *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception.* The CFPB notes that in 2020, the Federal Trade Commission (FTC) finalized a settlement with the operator of a consumer loan comparison website, LendEDU. The FTC found that, among other deceptive conduct, LendEDU misled consumers to believe its website provided objective product information, when in fact it offered higher rankings and ratings to companies that paid for placement. *Shop Tutors, Inc.,* No. 182–3180 (F.T.C. May 21, 2020) (complaint), *https://www.ftc.gov/system/files/documents/cases/c-4719_182_3180_lendedu_complaint.pdf* (FTC LendEDU Matter).

[67] 12 U.S.C. 2607(c)(4)(A)–(C); 12 CFR 1024.15(b)(1)–(3).

[68] *See* 12 U.S.C. 2602(7) (definition of affiliated business arrangement); 12 CFR 1024.15(c) (definition of ''[p]erson who is in a position to refer settlement service business'').

[69] 12 U.S.C. 2607(c)(4)(C); 12 CFR 1024.15(b)(3).

[70] Variations of this example—such as where the Operator receives no payment from the affiliated mortgage broker for being listed on the platform but receives indirect compensation because the Operator's preferential treatment generated additional business for the affiliate—may also violate RESPA section 8 depending on the circumstances. *See, e.g.,* 12 CFR 1024.15(b)(3)(ii) through (iv) (describing exclusions from the meaning of ''a return on an ownership interest'' and when returns on ownership interests or franchise relationships under an affiliated business arrangement are not bona fide).

(which is not necessarily the top-ranked lender) to promote that lender by sending a text message or email to any consumer who uses the platform to generate a ranking of lender options, encouraging the consumer to submit an application to that lender because it would be a good fit for the consumer's needs. The promotional activity by the Operator undermines the platform's neutral presentation of information by steering the consumer to use a particular provider soon after the consumer had searched for comparison information. The Operator's promotional activity, either by itself or when combined with the effect of the Operator's action in presenting the comparison options to the consumer, affirmatively influences the consumer's selection of that lender and is a referral. For the reasons described in section I.C.1.b above, payment in exchange for the promotional activity is not merely a payment for compensable services under RESPA section 8(c)(2).[71]

e. Warm Handoff

In another example, assume the Operator of a Digital Mortgage Comparison-Shopping Platform presents comparison information on multiple lenders and uses an online long form to gather detailed information from a consumer who is browsing the platform. The consumer's information relates to the consumer's particular borrowing needs, such as credit score and target loan amount. Soon thereafter, the Operator calls the consumer to offer an immediate phone or live chat transfer to, or callback from, a lender participating on the platform and tells the consumer that they will be ''in good hands'' with that lender. However, the lender that receives the lead is merely the first lender to respond to the Operator's push notification alerting a network of lenders that a consumer is available for an immediate transfer, rather than a lender the Operator identified as meeting the consumer's needs based on the consumer's inputted information. The sequence of events described above is one variation of a lead generation practice that industry stakeholders sometimes call a ''warm handoff'' or ''live transfer.'' [72] Through its enforcement activity, the CFPB has identified other examples of so-called ''warm handoff'' or ''live transfer'' activity that led to RESPA section 8 violations.[73]

In this example, the Operator's actions convey to the consumer an implied endorsement of the lender when the Operator tells the consumer that they will be ''in good hands'' with that lender. Further, regardless of the specific words used when the transfer occurs, a consumer who inputs detailed information to the Operator immediately before a transfer to a lender would reasonably infer that the consumer is being connected to the lender that best meets their needs. Moreover, the first lender to respond to the push notification receives the lead exclusively; HUD identified exclusivity as a relevant factor in determining whether a referral arrangement is present.[74] Therefore, the Operator's actions exert affirmative influence and constitute a referral. An Operator that receives payment for a warm handoff is not merely receiving payment for a compensable service, for the reasons described in section I.C.1.b above. The payment also would be considered a referral fee even if it does not differ among the providers participating in the warm transfer process.

3. Other Applicable Laws

The design, operation, and payments associated with Digital Mortgage Comparison-Shopping Platforms may implicate other Federal and State laws and regulations. As noted above, if an Operator makes false or misleading representations about the objectivity or veracity of the information presented on the platform, it may violate the Dodd-Frank Act prohibition on UDAAPs.[75] Operators may also be subject to laws and regulations that include, without limitation, 12 CFR part 1026 (Regulation Z); 12 CFR part 1008 (Regulation H) and State laws regarding licensing of mortgage originators; State laws imposing restrictions on referral fees and unearned fees; [76] 12 CFR part 1002 (Regulation B), which implements the Equal Credit Opportunity Act; and the Telemarketing Sales Rule.[77] Additional laws and regulations that may apply include the Federal Trade Commission Act,[78] the Telephone Consumer Protection Act,[79] and applicable Federal and State privacy laws. The CFPB's enforcement activity has also focused on the applicability of the Fair Credit Reporting Act in lead generation scenarios involving trigger leads.[80]

II. Regulatory Matters

This Advisory Opinion is an interpretive rule issued under the CFPB's authority to interpret RESPA and Regulation X, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of Federal consumer financial laws.[81]

By operation of RESPA section 19(b), no provision of RESPA or the laws of any State imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[82]

The CFPB has determined that this Advisory Opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[83]

Pursuant to the Congressional Review Act,[84] the CFPB will submit a report containing this interpretive rule and other required information to the United

[71] Regulation X provides that when a person in a position to refer settlement service business receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary, and distinct from the primary services provided by such person. 12 CFR 1024.14(g)(3); *see also* 12 CFR 1024.15(c) (''person who is in a position to refer settlement service business'' includes mortgage brokers). In this example, the Operator, who may be a mortgage broker, is providing a promotional ''service'' that is not actual, necessary, and distinct from the Operator's comparison function (*i.e.,* its primary service).

[72] Variations of this example, including where the Operator makes a ''warm handoff'' of a consumer to a lender that is not displayed to the consumer on the platform, may also violate RESPA section 8.

[73] *See, e.g., Planet Home Lending, LLC,* File No. 2017–CFPB–0007, at 4–5 (Jan. 31, 2017) (consent order) (Planet Home Order), *https://files.consumerfinance.gov/f/documents/201701_cfpb_PlanetHomeLending-consent-order.pdf.*

[74] *See* HUD, *Real Estate Settlement Procedures Act (RESPA): Home Warranty Companies' Payments to Real Estate Brokers and Agents Interpretive Rule: Response to Public Comments,* 75 FR 74620, 74621 (Dec. 1, 2010).

[75] 12 U.S.C. 5531, 5536(a)(1)(B); *see also* FTC LendEDU Matter; CFPB Bulletin 2022–05: *Unfair and Deceptive Acts or Practices That Impede Consumer Reviews,* 87 FR 17143 (Mar. 28, 2022); Consumer Financial Protection Circular 2022–02: *Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance,* 87 FR 35866 (June 14, 2022).

[76] *See generally* 1 Barron 2:59 (''Prohibition against referral fees and unearned fees—State prohibitions against referral fees and unearned fees'').

[77] 16 CFR part 310, which was issued under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101 *et seq.*

[78] 15 U.S.C. 41 *et seq.; see also* FTC LendEDU Matter.

[79] 47 U.S.C. 227.

[80] *See* Planet Home Order, at 6–7.

[81] 12 U.S.C. 5512(b)(1); *see also* 12 U.S.C. 2617(a).

[82] 12 U.S.C. 2617(b); *see also* 12 CFR 1024.4.

[83] 44 U.S.C. 3501 through 3521.

[84] 5 U.S.C. 801 *et seq.*

States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–02910 Filed 2–10–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1078; Project Identifier AD–2020–00716–A; Amendment 39–22324; AD 2023–02–17]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) (Textron) Model 210N, 210R, P210N, P210R, T210N, T210R, 177, 177A, 177B, 177RG, and F177RG airplanes. This AD was prompted by the in-flight break-up of a Model T210M airplane in Australia, due to fatigue cracking that initiated at a corrosion pit, and subsequent corrosion reports on other Model 210- and 177-series airplanes. This AD requires visual and eddy current inspections of the carry-thru spar lower cap for corrosion, cracking, and damage; corrective action if necessary; application of a protective coating and corrosion inhibiting compound (CIC); and reporting the inspection results to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2020–1078; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- For service information identified in this final rule, contact Textron Aviation Inc., One Cessna Boulevard, Wichita, KS 67215; phone: (316) 517–6061; email: *structures@txtav.com;* website: *support.cessna.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2020–1078.

FOR FURTHER INFORMATION CONTACT: Bobbie Kroetch, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4155; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Textron Model 210N, 210R, P210N, P210R, T210N, T210R, 177, 177A, 177B, 177RG, and F177RG airplanes. The NPRM published in the **Federal Register** on May 11, 2021 (86 FR 25812).

The NPRM was prompted by a report that, on May 26, 2019, a Textron Model T210M airplane experienced an in-flight breakup while performing low-altitude aerial survey operations in Australia. The carry-thru spar failed and resulted in wing separation and loss of control of the airplane. A visual examination of the fracture surface identified fatigue cracking that initiated at a corrosion pit. The FAA issued an airworthiness concern sheet (ACS) on June 27, 2019, advising owners and operators of the accident and requesting relevant information about the fleet.

Following the ACS, the FAA received reports of widespread and severe corrosion of the carry-thru spar. Earlier Model 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, and T210M airplanes experienced the most widespread and severe corrosion, and the FAA issued AD 2020–03–16, Amendment 39–21029 (85 FR 10043, February 21, 2020) (AD 2020–03–16) as an immediately adopted rule (Final Rule; Request for Comments) to address the unsafe condition on those airplanes.

The FAA also received reports of corrosion on later Model 210N, P210N, T210N, 210R, P210R, and T210R airplanes and Model 177-series airplanes. On Model 210N, P210N, T210N, 210R, P210R, and T210R airplanes, the upper surface of the carry-thru spar is covered by fuselage skin and is not exposed to the environment. This removes the leak paths at the skin splices common to the earlier Model 210-series airplanes and reduces the potential for moisture intrusion. Additionally, the later Model 210-series airplanes were manufactured with zinc chromate primer applied to all carry-thru spars. However, the later Model 210-series airplanes were also delivered with foam installed along the carry-thru spar lower cap. The foam traps moisture against the lower surface of the carry-thru spar cap, which can aid in the development of corrosion.

The Model 177-series airplanes share a similar carry-thru spar design with the earlier Model 210-series airplanes: The upper surface of the carry-thru spars are exposed, and the carry-thru spars might not have been delivered with zinc chromate primer applied. Although Model 177-series airplanes were not delivered with foam padding installed on the lower surface of the carry-thru spar, corrosion has been reported on the carry-thru spar lower cap for these airplanes. Corrosion of the carry-thru spar lower cap can lead to fatigue cracking or reduced structural strength of the carry-thru spar, which, if not addressed, could result in wing separation and loss of control of the airplane.

In the NPRM, the FAA proposed to require visual and eddy current inspections of the carry-thru spar lower cap for corrosion, cracking, and damage; corrective action if necessary; application of a protective coating and CIC; and reporting the inspection results to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from 124 commenters. The majority of comments were from individuals. Organizations submitting comments included the Aircraft Owners and Pilots Association (AOPA), Aviation Plus LLC,

Cardinal Flyers Online, and Textron. In addition, the FAA has included in the docket a discussion with the European Union Aviation Safety Agency that clarifies the proposed NPRM. The following summarizes the comments received on the NPRM and provides the FAA's responses.

A. Requests To Withdraw the NPRM

Comment summary: AOPA and numerous individual commenters requested that the NPRM be withdrawn.

1. There Is No Unsafe Condition: Crash Was Maintenance/Operation Issue

Seven commenters stated that the NPRM was unnecessary because they diligently inspect their airplanes and have not detected any problems during their inspections. Three commenters explained that this crash was due to a maintenance issue. One commenter questioned how the accident airplane was maintained. Another commenter stated that an AD is not necessary because the Model T210M spar fracture was due to heavy use and lack of maintenance and that a service bulletin would be sufficient. Several individual commenters discussed how the accident airplane was operated, stating improper operation and operation outside the standard limit of the airframe caused the accident.

Two commenters stated that there does not appear to be evidence that a problem exists. One commenter stated that voluntary visual inspections of the fleet have not exposed a widespread issue and noted that all airplane structures are exposed to the same aging issues of corrosion and fatigue and that the NPRM singles out Model 210- and 177-series airplanes.

FAA response: The FAA disagrees with the commenters' requests to withdraw the NPRM. Based on available data, including the corrosion and damage reports received, the FAA disagrees that an unsafe condition does not exist. While the in-flight break-up of a Model T210M airplane in Australia was the catalyst for this AD, the FAA determined that Model 210- and 177-series airplanes share a common single-load path design constructed from the same material. Also, the FAA issued an ACS, dated June 27, 2019, advising owners and operators of the accident and requesting relevant information about the fleet. The reports gathered in response to this ACS, combined with inspection reports received in response to AD 2020–03–16, issued to address widespread and severe corrosion of the carry-thru spars on Model 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, and T210M airplanes, revealed that carry-thru spars for Model 210- and 177-series airplanes are subject to corrosion. Corrosion can initiate cracking, resulting in a carry-thru spar being unable to carry the required load.

Australian Transport Safety Bureau (ATSB) Report AO–2019–026, *In-flight break-up involving Cessna T210M, VH–SUX,* dated May 26, 2019 (ATSB AO–2019–026) does state, in part, that ''The cyclic loads induced by the low-level survey flight profile were significantly greater than those associated with the higher-level flight profile originally intended for the aircraft type. This probably increased the risk of fatigue-related structural failure.'' However, ATSB AO–2019–026 does not list inadequate operator maintenance or identify improper operation as contributing factors to the accident.

The FAA acknowledges that the carry-thru spar on individual airplanes might not have findings of corrosion or damage. However, as of January 13, 2023, the FAA has received 226 inspection reports from operators of Model 210N, 210R, P210N, P210R, T210N, and T210R airplanes that include 21 reports of corrosion and damage, with two carry-thru spars removed from service. The FAA has also received 211 inspection reports from operators of Textron Model 177-series airplanes that include 120 reports of corrosion and at least 14 spars removed from service due to corrosion or damage.

2. NPRM Was Overreaching

Three commenters stated that the NPRM was overreaching. One commenter stated that the NPRM could be interpreted as punitive and another commenter stated that it is overreaching because it cast a net to include all Model 177-series airplanes and most Model 210-series airplanes.

FAA response: The FAA disagrees with the commenters' requests to withdraw the NPRM. Based on available data, including the corrosion and damage reports received, the FAA disagrees that the NPRM was overreaching by including all Model 210- and 177-series airplanes in the applicability. The FAA agrees that other types and models of airplanes have corrosion and fatigue issues, but this AD and its compliance time are based on data for these model airplanes and the nature of this unsafe condition. The applicability of this AD is all Model 210- and 177-series airplanes with carry-thru spars manufactured from 2014–T6 aluminum forging because this part is single-load path, critical structure manufactured from a material susceptible to severe corrosion.

3. NPRM Is Unnecessary: Use Existing Maintenance Directions, Service Documents, or Issue a Special Airworthiness Information Bulletin (SAIB)

Six commenters requested the FAA withdraw the NPRM and allow operators to rely upon the existing maintenance directions or service documents. Another commenter stated that a Textron service letter approach would be sufficient. One commenter stated that the service information approach was the correct decision and that Textron should provide data behind the request for the NPRM. The FAA infers that the commenter is requesting that the NPRM be withdrawn in lieu of service information. One commenter suggested that the FAA issue an SAIB instead of an AD.

FAA Response: The FAA disagrees with the commenters' requests to withdraw the NPRM. The procedures in Textron service letters are not legally enforceable requirements. Similarly, the FAA could issue an SAIB to draw attention to the inspections area, but an SAIB is informational only. Thus, an AD is the only way the FAA can mandate the procedures necessary to fix the unsafe condition.

Textron does not have the authority to determine if the FAA will or will not issue an AD on a potential airworthiness issue. The FAA has the regulatory authority to issue an AD and, in compliance with 14 CFR 39.5, issues an AD when it determines that an unsafe condition exists that is likely to exist or develop in other products of the same type design. For this AD, the FAA based its determination on data received in response to the ACS dated June 27, 2019, inspection reports completed on airplanes in the fleet, and data and analysis provided by Textron and evaluated by the FAA.

Cessna previously identified the carry-thru spar as an area of concern through the Continued Airworthiness Program (CAP) inspections, introduced in 1992, as well as the later published supplemental inspection documents (SIDs). Specifically, CAP Inspection Number 57–10–08 for the Cessna 210 identifies inspections for the carry-thru spar lower surface and additional inspection on the lower spar cap. Subsequent inspections completed after the Model T210M accident in Australia indicated that operators were not doing the voluntary inspections specified in the SIDs.

B. Requests Regarding Data Justifying AD Action

Comment summary: Eleven commenters requested that the FAA provide the data used to justify the NPRM. One commenter stated that pilots and owners need access to the underlying data being used to make critical decisions. Another commenter stated that neither the FAA nor Textron presented any evidence of the corrosion issue existing in Model 210-series airplanes that came from the factory with corrosion proofing coating already applied, specifically the 1979 N-model and newer airplanes, and suggested the FAA investigate the issue before taking widespread steps to correct what may be a theoretical issue. An additional commenter stated that no description is found specifying what constitutes severe corrosion compared to non-severe corrosion and requested to know how likely a carry-thru spar is to fail with corrosion versus severe corrosion. Another commenter requested that the FAA provide data to show there is a real threat to warrant immediate intervention.

FAA response: The FAA agrees with the commenters' requests to provide additional information regarding the data used to justify issuing this AD. Prior to issuing AD 2020–03–16 and the NPRM for this final rule, the FAA issued the ACS, dated June 27, 2019, advising owners and operators of the accident involving the Model T210M airplane in Australia and requesting relevant information about the fleet. The FAA evaluated data obtained in response to the ACS and from inspection reports completed in response to Textron Aviation Mandatory Single Engine Service Letter, SEL–57–06, dated June 24, 2019 (Textron SEL–57–06); Textron Aviation Single Engine Service Letter SEL–57–07, dated June 24, 2019 (Textron SEL–57–07); and subsequent Textron service letters that are identified in the Other Related Information paragraph. The data demonstrated that the risk was higher in earlier Model 210 airplanes (Model 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, and T210M airplanes), which supported issuing AD 2020–03–16 as an immediately adopted rule (Final Rule; Request for Comments).

The data received for later Model 210- and 177-series airplanes supported issuing the NPRM for this final rule. As of January 13, 2023, the FAA has received inspections results for 226 Model 210N, 210R, P210N, P210R, T210N, and T210R airplanes, including 21 reports of corrosion and damage and 2 spars removed from service. None of these later model airplanes reported cracking in the carry-thru spar. For Model 177-series airplanes, the FAA has received inspections results for 211 airplanes, including 120 reports of corrosion and at least 14 spars removed from service due to corrosion or damage. There have not been any reports of cracking in the lower flange of the carry-thru spars on Model 177-series airplanes.

Model 210- and 177-series airplanes share a similar carry-thru spar design with similar geometry. The carry-thru spars are single-load path, critical structure manufactured from 2014–T6 aluminum forging, which is susceptible to intergranular corrosion. A description of intergranular corrosion can be found in Chapter 2, Section 2.5.5, of FAA Advisory Circular AC 43–4B, *Corrosion Control for Aircraft,* dated September 11, 2018. Analysis completed by Textron demonstrated that the carry-thru spars on Model 210- and 177-series airplanes experience similar stress levels in operation. As of January 13, 2023, at least six spars were reported to have suspected cracking associated with corrosion in the lower flange of the carry-thru spar on early Model 210-series airplanes. For the carry-thru spar, severe corrosion is demonstrated by blistering, scaling, flaking, or measuring in excess of 0.010-inch deep. Any corrosion that results in cracking also qualifies as severe corrosion. Due to a large number of variables, the FAA cannot predict how spars with varying degrees of theoretical corrosion could fail in comparison to one another. However, the FAA's inability to predict the precise moment of failure does not eliminate or invalidate the unsafe condition.

The FAA determined that a longer compliance time than what is required by AD 2020–03–16 was acceptable for addressing the identified unsafe condition for later Model 210-series airplanes (Models 210N, P210N, T210N, 210R, P210R, and T210R airplanes) and Model 177-series airplanes, which is why those airplane models were not included in AD 2020–03–16 but are included in the applicability for this AD.

C. Requests Regarding Applicability

Numerous individual commenters requested changes to the applicability of the proposed AD for a variety of reasons.

1. Accounting for Differences Between Model 210- and 177-Series Airplanes

Comment summary: Thirteen commenters requested that the proposed AD account for differences between Model 210- and 177-series airplanes, including weight, operational usage, flight characteristics, wing loading, and application of corrosion protection. Four commenters stated that the FAA should account for the lack of interior foam padding installed on the lower carry-thru spar cap lower surface on Model 177-series airplanes as compared to Model 210-series airplanes. Two commenters identified that Model 177-series airplanes lack an interior bracket that is installed on Model 210-series airplanes, with one commenter noting the straps are dissimilar metal. Another commenter stated that corrosion on Model 177-series airplanes was found on the spar web, lower cap to web radius, and upper surface of the lower cap, as opposed to the Model 210-series airplanes where corrosion was found on the lower surface of the lower cap.

FAA response: The FAA acknowledges that there are differences in the carry-thru spars between Model 210- and 177-series airplanes. The FAA agrees that any subsequent rulemaking for the carry-thru spars on Model 210- and 177-series airplanes might not be the same. However, this is an interim AD requiring a visual inspection, eddy current inspection of the critical location, and corrosion treatment of the spars, and the FAA has determined that this action is necessary to address the unsafe condition for all affected airplanes.

Although the carry-thru spars for both Model 210- and 177-series airplanes are constructed from the same 2014–T6 aluminum forgings, the thicknesses of the caps are thinner on Model 177-series airplanes compared to Model 210-series airplanes. While the carry-thru spars on Model 177-series airplanes do not have interior foam adhered to the lower carry-thru spar cap, the installation orientation of the carry-thru spar in the airplane can result in moisture collecting on the upper surface of the forward flange of the carry-thru spar lower cap, and corrosion has been found on the tension-carrying lower cap. This AD only requires inspecting the lower cap and not the upper cap, web, or web to lower cap radius. Of the 120 reports of corrosion for Model 177-series airplanes, 27 include findings of corrosion on the upper surface of the lower carry-thru spar cap, an area included in the inspections required by this AD. Many of the 120 reports included insufficient information to identify the specific location of the corrosion.

Like the carry-thru spars on Model 210-series airplanes, some carry-thru spars on Model 177-series airplanes

were treated with primer in the factory prior to delivery, though not all spars were treated. This AD does account for the differences in these carry-thru spars in the required corrosion protection application. However, the existence of primer itself may not eliminate the possibility that corrosion exists and the spars still must be inspected. The FAA reviewed reports gathered in response to the ACS, dated June 27, 2019, and in response to AD 2020–03–16, which demonstrated that the carry-thru spars on both Model 210- and 177-series airplanes are subject to corrosion. Corrosion can initiate a crack, resulting in the carry-thru spar being unable to carry the required load. Analysis demonstrates crack growth can happen on an airplane under typical operation and in the original configuration. The carry-thru spars installed on Model 210- and 177-series airplanes share a similar single-load path design and geometry, are critical structure, and are constructed of 2014–T6 aluminum forging, which is susceptible to intergranular corrosion. Analysis completed by Textron demonstrated that the carry-thru spars experience similar stress levels in typical operation.

Although Model 177-series airplanes lack interior brackets that are installed on Model 210-series airplanes, corrosion on Model 210-series airplanes is not limited to the area surrounding the interior brackets and has been reported in a variety of locations on the carry-thru spar lower cap. The interior brackets installed on a limited number of Model 210-series airplanes are manufactured from 2024–T42 aluminum, which would not cause dissimilar metal corrosion with the carry-thru spar 2014–T6 aluminum forging. Corrosion has also been reported on Model 210-series airplanes that do not have the interior brackets installed.

2. Removing Model 177-Series Airplanes

Comment summary: One commenter stated that Model 177-series airplanes should not be included in the applicability of the proposed AD because the Model T210M airplane involved in the Australia accident was highly modified and flown in an aggressive manner that exceeded its design parameters. Eight commenters stated that there is a lack of service difficulty reports and failures associated with Model 177-series airplanes to justify including them in the applicability of the proposed AD. Three commenters stated that they did not find any issues during their airplane inspections. One commenter requested that Model F177RG airplanes be excluded from the applicability of the proposed AD because they were delivered from the factory with an interior coating of zinc chromate for corrosion protection.

Two commenters stated that the Cessna Model 177 community is proactive regarding maintenance and has a strong type club. The FAA infers that these commenters are requesting changes to the proposed AD based on the proactive nature of the Cessna Model 177 community.

FAA response: The FAA does not agree with the commenters' requests to remove Model 177-series airplanes from the applicability of this AD. The justification for issuing this AD is not based solely on the accident of the Model T210M airplane in Australia. Although that accident was a catalyst, as mentioned previously, the carry-thru spars on Model 210- and 177-series airplanes share a similar single-load path design, are critical structure, and are constructed of 2014–T6 aluminum forging, which is susceptible to intergranular corrosion. The FAA does not dispute that carry-thru spars on individual airplanes may not be affected by corrosion or damage; however, the reported inspection results demonstrate that Model 177-series airplanes do have a high rate of corrosion and damage.

The FAA agrees that the Cessna 177 community has a very strong type club and many proactive owners and operators. However, the FAA disagrees that Model 177-series airplanes should not be subject to the actions defined in the proposed AD. Not all operators are proactive and diligent in voluntarily inspecting for corrosion, so the inspections must be mandated. Out of the 211 Model 177-series reports received by the FAA as of January 13, 2023, 120 have reported corrosion. Of those, at least 14 were removed from service due to corrosion or damage.

The FAA acknowledges that some Model 177-series carry-thru spars, including those on Model F177RG airplanes, were treated with primer in the factory prior to delivery. This AD does account for the differences in these spars in the requirement to apply corrosion protection. However, the FAA disagrees that airplanes delivered from the factory with corrosion protection applied should be excluded from the AD, as corrosion has been reported on airplanes with factory-applied corrosion protection.

3. Removing Certain Model 210-Series Airplanes

Comment summary: Two commenters requested that later Model 210-series airplanes (Models 210N, 210R, P210N, P210R, T210N, and T210R) be removed from the applicability of the proposed AD because the cabin roof skin is one piece and completely covers the carry-thru spars, which prevents water entry. The commenters stated that these airplane models were factory-primed prior to installation, which improves the corrosion protection, and that none of the Model 210N and Model 210R airplanes that they are responsible for have evidence of corrosion related problems. One of the commenters stated that Model 210N airplanes, especially Model P210N airplanes, should not be included in the proposed AD because these airplanes have continuous fuselage skin and have factory-applied zinc chromate coating and sealant applied on the pressurized fuselage.

FAA response: The FAA acknowledges that later Model 210-series airplanes, including Model 210N, 210R, P210N, P210R, T210N, and T210R airplanes, are less susceptible to corrosion than the earlier Model 210-series airplanes. As of January 13, 2023, the FAA has received inspection reports on 226 later Model 210-series airplanes, including 15 (7%) reporting corrosion. No later Model 210-series airplanes were removed from service due to corrosion. Two carry-thru spars were removed from service due to damage. This is compared to 47% of the earlier Model 210-series airplanes reporting corrosion and 57% of the Model 177-series airplane fleet reporting corrosion.

The combined features of factory primer, continuous skin, and sealing, specifically associated with the pressurized airplanes, likely contributed to the lower corrosion rate; however, carry-thru spars on all Model 210-series airplanes have a similar carry-thru spar design and the actions identified in this AD are appropriate for all Model 210-series airplanes. As previously discussed, the carry-thru spars have a single-load path critical structure, and the spar is constructed of 2014–T6 aluminum forging, which is susceptible to intergranular corrosion. Additionally, analysis completed by Textron revealed that later Model 210-series airplanes, due to their weight and configuration, demonstrate higher stress levels in operation when compared to earlier Model 210-series airplanes. Therefore, the critical crack length—the length at which the crack reduces the capability of the structure below that provided in the certification basis—is smaller in the later Model 210-series airplanes. This AD is interim action and the FAA will continue to evaluate the inspection reports when determining final action for mitigating the identified unsafe

condition on Model 210-series airplanes.

4. Airplane Operation

Comment summary: Several commenters requested that the applicability of the proposed AD take into account the type of airplane operation. The commenters noted that the Model T210M airplane that experienced the in-flight break-up was operated in a more severe manner than the typical fleet. One commenter noted that Textron SEL–57–07 included similar visual and eddy current inspections as those in the proposed AD but the effectivity was limited to airplanes flown with severe usage, as defined by service and maintenance manual information. Another commenter suggested that an evaluation be used similar to one that was used for the Piper wing spar AD 2020–26–16, Amendment 39–21371 (86 FR 3769, January 15, 2021).

FAA response: The FAA reviewed inspection reports provided by operators of the current fleet of Model 210- and 177-series airplanes, which includes corrosion reports for airplanes operated in various environments, ranging from mild to severe corrosion environments, and under different types of operation. In addition, enforcement of an AD based on airplane operation would be difficult because FAA regulations do not require all operators to maintain records of operations based on usage and many airplanes are utilized in different kinds of operations.

The FAA determined that an evaluation similar to the one used for Piper wing spar AD 2020–26–16 is not appropriate for this AD. AD 2020–26–16 requires calculating ''factored service hours'' for each main wing spar to determine when an inspection is required. The application of the ''factored service hours'' formula will identify when an airplane meets the criteria for the eddy current inspection of the lower main wing spar bolt holes and replacement of the wing spar on affected Piper airplanes.

The unsafe condition on the Model 210-and 177-series airplanes addressed by this AD involves both corrosion and cracking. The FAA cannot use an evaluation similar to the one used for the Piper airplanes to draw the same conclusions or correlations to the unsafe condition addressed by this AD, as the unsafe condition associated with AD 2020–26–16 is primarily associated with fatigue cracking concerns.

5. Primed and Unprimed Airplanes

Comment summary: One commenter requested that the FAA account for the differences in primed and unprimed carry-thru spars on Model 177-series airplanes in the proposed AD. The commenter explained that early Model 177-series airplanes did not have protective coating (primer) applied from the factory but mid and later year airplanes did.

FAA response: The FAA acknowledges that carry-thru spars on some Model 177-series airplanes were treated with primer in the factory prior to delivery and this AD does account for the differences between primed and unprimed airplanes regarding the requirement to apply corrosion protection. However, the FAA disagrees that airplanes delivered with factory-applied corrosion protection should be excluded from the applicability of this AD. Corrosion has been reported on airplanes with factory-applied corrosion protection and the carry-thru spars on those airplanes must be inspected.

D. Requests Regarding Special Flight Permits

Comment summary: AOPA, Cardinal Flyers Online, and several individual commenters requested that the FAA allow special flight permits. The commenters explained that not all owners and operators have local repair and maintenance facilities and that many repair and maintenance facilities cannot perform all of the actions necessary to comply with the requirements specified in the proposed AD. The commenters noted that paragraph (m) of the proposed AD prohibited special flight permits, which would prohibit any flight to complete the visual and eddy current inspections specified in the proposed AD; therefore, all visual inspections and on-condition blending must either be completed at a facility with eddy current capability or would require an inspector with such capability to travel to the airplane. The commenters stated that allowing special flight permits would allow more facilities to complete individual portions of the inspection, increasing capacity and alleviating backlog at aircraft maintenance facilities. The commenters stated that allowing special flight permits could increase repair quality, improve scheduling, reduce costs, and encourage more owners to complete the inspections, increasing the safety of the fleet. Prohibiting special flight permits, however, could result in the inability to repair the affected airplanes. In addition, four commenters stated that the lack of documented failures for the Model 177 does not justify the prohibition of special flight permits.

FAA response: The FAA partially agrees with the commenters' requests and revised paragraph (m) of this AD to allow special flight permits in limited situations because it would grant owners and operators more flexibility when complying with the required actions in this AD and reduce the burden on inspection facilities and mechanics.

The FAA revised paragraph (g)(4) of this AD to allow airplanes without detected corrosion, cracking, or other damage, or evidence of previous corrosion removal to continue to operate and complete the eddy current inspection required by paragraph (h) of this AD within 200 hours TIS after the effective date of the AD or within 12 months after the effective date of this AD, whichever occurs first.

The FAA agrees with allowing an airplane with evidence of corrosion to be relocated if the process for obtaining a special flight permit is completed in accordance with FAA regulations, policy, and guidance. Furthermore, the FAA agrees with allowing an airplane with damage other than corrosion or evidence of previous blending to be relocated, provided the Wichita ACO Branch is contacted and provides concurrence.

The FAA disagrees with granting special flight permits if either the visual inspection or the eddy current inspection detects cracking in the carry-thru spar lower cap.

E. Requests Regarding Compliance Time

1. Extend the Compliance Time for the Required Inspections

Comment summary: AOPA, Aviation Plus LLC, Cardinal Flyers Online, and numerous individual commenters requested that the compliance time be extended for the visual inspection specified in paragraph (g) of the proposed AD (within 200 hours time-in-service (TIS) or within 12 months after the effective date, whichever occurs first). Four commenters suggested the compliance time be 200 hours TIS or within 12 months after the effective date of the AD, whichever occurs later. Two commenters suggested requiring the visual inspection within 12 months after the effective date of the AD, but not requiring the eddy current inspection required by paragraph (h) of the proposed AD within that timeframe. Several commenters remarked that TIS is more critical than calendar time and requested the FAA remove the 12 month time requirement to complete the visual inspection. One commenter suggested the compliance time be changed to 200 hours TIS or the next annual inspection

after the issuance of the AD, whichever occurs first. Two commenters provided additional compliance times, ranging from 36 months or 500 hours TIS to 5 years and 200 hours TIS. Eleven commenters noted that the 12-month calendar limit would make compliance difficult due to limited availability of maintenance facilities and personnel, potentially grounding airplanes. Several commenters raised concerns that there are not enough qualified maintenance facilities to handle the workload of the inspection within a 12-month period, especially given the prohibition on special flight permits and the requirements of an AD for the Piper wing spar.

One commenter mentioned that most Textron Model 177-series airplanes are flown less than 200 hours per year and three commenters identified that no carry-thru spars have failed on the Textron Model 177-series airplanes. The FAA infers that these commenters are thus requesting an increase in the compliance time for the inspections required by this AD.

FAA response: Based on the inspection reports received, the FAA disagrees with extending the compliance times specified in paragraph (g) of this AD. The compliance times specified in this AD correspond with the compliance times published in Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, Revision 2, dated August 3, 2020 (Textron SEL–57–08R2) and Textron Aviation Single Engine Service Letter SEL–57–09R1, dated August 3, 2020 (Textron SEL–57–09R1). Textron superseded Textron Aviation Mandatory Single Engine Service Letter, SEL–57–07, Revision 1, dated November 19, 2019 (Textron SEL–57–07R1), with Textron SEL–57–09R1, which identifies a compliance time of 200 flight hours or the next annual inspection from date of receipt, of that service letter, whichever occurs first.

The FAA does not agree with a compliance time based solely on usage TIS or on calendar time, nor does the FAA agree that the compliance time should be ''200 hours TIS or 12 months, whichever occurs later'' after the effective date of this AD. The carry-thru spar is a critical single-load path structure, and if a crack initiates, there could be a catastrophic failure. Corrosion is a function of calendar time and crack growth is a function of hours TIS. The FAA has received reports of severe corrosion on carry-thru spars with less than 4,000 hours TIS and corrosion could initiate cracking in structure with low hours TIS.

The FAA does not agree with revising the compliance time to ''200 hours TIS or next annual inspection after the issuance of this AD, whichever occurs first'' because if the next annual inspection is due before 12 months after the effective date of this AD that would be more restrictive than the language in the proposed AD, and could occur almost immediately. Operators can always accomplish the actions required by an AD prior to the compliance time specified in an AD.

The FAA has revised paragraph (g)(4) of this AD to allow airplanes without detected corrosion, cracking, or other damage, or evidence of previous corrosion removal to do the eddy current inspection required by paragraph (h) of this AD within 200 hours TIS after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first.

The FAA acknowledges both the limitations on the availability of maintenance facilities and personnel capable of completing the inspections required in this AD and the difficulty in meeting the compliance time in paragraph (g) of this AD without the ability to relocate the airplane. The FAA would entertain alternative methods of compliance (AMOCs) to extend the compliance time on a case-by-case basis provided the work was scheduled. If scheduling an eddy current inspection is difficult, an owner, operator, or any interested party can apply for an AMOC using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC provides an acceptable level of safety for a different method or adjustment of the compliance time to address the unsafe condition, other than the one specified in the AD. Also, the FAA has revised paragraph (g)(4) in this AD to allow airplanes without detected corrosion, cracking, or other damage, or evidence of previous corrosion removal to complete the actions required by paragraph (h) of this AD within 200 hours TIS after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs first. As discussed above in section D., Requests Regarding Special Flight Permits, the FAA has revised paragraph (m) of this AD to allow special flight permits in limited situations.

2. Correspond Compliance Time for Eddy Current Inspection With Service Letter

Comment summary: One commenter requested the FAA explain the differences between the proposed AD requiring an eddy current inspection within one year and the Textron service letter (Textron SEL–57–07) that specified an eddy current inspection for most Model 177-series airplanes at or after 15,000 hours TIS. The FAA infers that the commenter is requesting the compliance time specified in the proposed AD match what is in the Textron SEL–57–07.

FAA response: The FAA agrees that there are differences between the compliance time in the proposed AD and Textron SEL–57–07. Textron Aviation superseded Textron SEL–57–07 with Textron SEL–57–09R1, which specifies a compliance time of 200 flight hours or the next annual inspection from date of receipt, whichever occurs first. Textron SEL–57–09R1 applies to all Model 177-series airplanes identified in this service letter regardless of the total flight hours on the airframe. The compliance time specified in this AD aligns with the compliance time in Textron SEL–57–09R1 and there is no justification for aligning the compliance time with what is specified in the superseded Textron SEL–57–07.

3. Account for TIS

Comment summary: Nine commenters requested that the proposed AD account for an airplane's TIS and one of those commenters noted that the accident airplane had a high number of hours TIS. Three of those commenters suggested a compliance time ranging from 2,500 hours TIS to 12,000 hours TIS. Several commenters cited high costs as justification for only requiring airplanes with a high number of hours TIS to do the actions specified in the proposed AD.

FAA response: The FAA disagrees with limiting the inspections required by this AD to airplanes with a high number of hours TIS. This AD is not based solely on the fatal 2019 accident in Australia involving a Model T210M airplane. As of January 13, 2023, there have been reports of corrosion on 120 Model 177-series airplanes, with at least 14 spars removed from service due to corrosion and damage of the lower cap, including a spar removed from service with less than 2,000 hours TIS. Additionally, 460 Model 210-series airplanes have reported corrosion, with 64 spars removed from service due to corrosion and damage, including five removed from service with less than 3,000 hours TIS. Inspections based on TIS alone are not sufficient to identify and address corrosion, as corrosion is a function of calendar time. Corrosion can serve as a crack initiator, resulting in the spar being unable to carry the required load. Analysis completed by Textron

demonstrates this crack growth can happen under typical operation.

4. Align Compliance Time With Maintenance Schedules

Comment summary: One commenter requested that the FAA allow the inspections to be completed when the inspection area is exposed for other maintenance. The FAA infers that the commenter is making this request to reduce costs and airplane down time.

FAA response: The FAA acknowledges the commenter's request to limit maintenance access to reduce the time and money spent to comply with the requirements of this AD. However, the FAA considers this AD to be interim action and is still evaluating what actions must be required when issuing future rulemaking that will be considered final action to address the identified unsafe condition. During this evaluation, the FAA will consider if, for any future rulemaking, compliance times can be developed that correspond with scheduled maintenance; however, for this AD, the FAA does not agree with extending the compliance time for the entire fleet. The compliance time of this AD is within 200 hours TIS or 12 months after the effective date of this AD, whichever occurs first. This compliance time may allow the actions to be accomplished at the same time as regular maintenance, as the requirements of this AD can always be completed early. An owner, operator, or any interested party can apply for an AMOC to propose an adjustment of the compliance time using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC provides an acceptable level of safety for a different method or adjustment of the compliance time to address the unsafe condition, other than the one specified in the AD.

F. Requests Regarding Requiring Actions To Align With Service Information

Comment summary: Sixteen commenters requested that the FAA only require the actions specified in the Textron service information. One commenter stated that general aviation is struggling, and due to costs an AD should not require pilots to do any actions beyond those specified in the Textron service information. Two additional commenters mentioned the additional costs of repeating portions of the inspections in areas that differed between the Textron service information and the proposed AD. One commenter stated that the FAA should require the airplane manufacturer to create service information that will preserve the airworthiness of the carry-thru spar so compliance with the service information will count if the service information is included in an AD. Another commenter stated when the FAA overrides manufacturers' service information with ADs airplane owners would become less willing to use the information in future service bulletins because of concern that the FAA would require duplication of the actions in the service bulletins in an AD. One commenter stated that paragraph (g)(2) of the proposed AD negates the directions in paragraph (B)(2) of Textron SEL–57–09R1 because the service letter states to ''Make sure to only remove the minimum material necessary to blend the corroded surface with the surrounding surface.''

FAA response: The FAA disagrees that this AD should only require the actions specified in the Textron service information. After reviewing the procedures specified in that service information, the FAA determined that the unsafe condition could not be mitigated using only those procedures. Prior to the publication of the NPRM, the FAA received reports indicating that the visual inspection might not detect corrosion similar to that observed on the accident airplane. The fatigue crack on the accident airplane that caused the catastrophic failure of the carry-thru spar initiated at a corrosion pit approximately 0.011-inch deep. Cracking may be difficult to detect through visual inspection alone since the lower spar cap is in compression during the inspection. The eddy current inspection, however, could detect cracking from undetected corrosion or damage.

The FAA disagrees that paragraph (g)(2) of this AD negates the directions in step 6.B.(2) of the Accomplishment Instruction in Textron SEL–57–09R1. Paragraph (g)(2) of this AD addresses removal or repair of the carry-thru spar due to evidence of previous blending. The FAA agrees with granting credit for blending previously completed using Textron service letters and the FAA acknowledges that owners, operators, and maintenance personnel could have proactively completed the actions described in the Textron service letters. The FAA has revised paragraph (l) of this AD to clarify credit for previous blending completed using the procedures in older revisions of the Textron service letters. Paragraph (f) of this AD already provides credit for blending action completed prior to the effective date of this AD using Textron SEL–57–08R2 or Textron SEL–57–09R1.

The FAA agrees that alignment of a manufacturer's service documents and the requirements of an AD is ideal; however, the FAA cannot mandate a company to issue specific service information. Per 14 CFR 39.27, if an AD conflicts with the service document on which it is based, then the operator must follow the requirements of the AD. Additionally, the Textron service information clearly indicates that the compliance time presented might not apply to modified airplanes, including modifications that alter the airplane's design, gross weight, or airplane performance, including, but not limited to, installation of vortex generators, wing cuffs, short take-off and landing (STOL) kits, wing tips, and add-on wing fuel tanks. The FAA is responsible for considering the effects of these modifications on the airplanes included in the applicability of this AD.

While the FAA cannot mandate that the service information be revised, nor can the agency wait on such information to address the unsafe condition, the FAA may allow an AMOC if the service information is revised and the FAA finds it acceptable to address the unsafe condition. If Textron revises its service information and the FAA determines that the revisions mitigate the unsafe condition, an owner, operator, or any interested party can apply for an AMOC using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC provides an acceptable level of safety for a different method to address the unsafe condition, other than the one specified in the AD.

The FAA has not changed this AD in regard to this issue.

G. Requests Regarding Limiting the AD to the Lower Carry-Thru Spar Cap

Comment summary: Two individual commenters requested the requirements of the proposed AD be limited to inspections on the lower carry-thru spar cap. Another commenter supported the focus on the lower spar flange but noted that, in the proposed AD, mechanics could miss the statement that limits the scope of the inspection. One commenter acknowledged that the NPRM specified a mechanic is not required to inspect the lower cap to web radius, spar web, upper cap, or lugs, but that nothing excludes a mechanic from taking a spar out of service if any evidence of previous blending in those areas is found.

FAA response: The FAA agrees with the commenter's requests to limit the requirements of this AD to inspections of the lower carry-thru spar cap and finds that, as written, the requirements of this AD are limited to inspections of the carry-thru spar lower cap including the lower surface, upper surface, and

edge. As detailed in paragraph (g) of this AD, inspecting the lower cap to web radius, spar web, upper cap, or lugs is not required. The preamble of this AD mentions that actions related to the web, upper caps, and lugs are not included as part of this AD. A mechanic may take a spar out of service during any inspection or maintenance event if the airplane is determined to not be airworthy to return to service.

The FAA has not changed this AD in regard to this issue.

H. Requests Regarding Eddy Current Inspection

1. On-Condition Eddy Current Inspection

Comment summary: Thirty-five commenters requested that the eddy current inspection of the carry-thru spar specified in paragraph (h) of the proposed AD only be required as an on-condition action when there is visual evidence of corrosion or damage. Three commenters stated that corrosion or cracking on the lower surface of the spar should be readily observable through a detailed visual inspection. Three commenters requested data justifying the eddy current inspection on airplanes that did not exhibit corrosion pitting on the carry-thru spar. One commenter asked why an airplane would need an eddy current inspection if the spar was delivered with a factory-applied protective coating, is clean and dry, and is not operated in an environment subject to moisture or other corrosion causing elements. Another commenter noted that over 300 visual inspections were completed on Model 177-series airplanes since the FAA identified this as a potential concern and none of the reports indicated that cracking was found. A different commenter requested that the FAA explain why it proposed expanding Textron's inspection requirements, which only specified eddy current inspections of the carry-thru spars if there were visual signs of corrosion, and asked if the FAA had significant evidence or engineering information indicating there could be internal corrosion or cracking even though it's not visible on the surface. One commenter stated that interpretation of the eddy current inspection results can be subjective. Two commenters requested requiring repetitive visual inspections instead of the eddy current inspection.

FAA's response: The FAA disagrees with the commenters' requests to make the eddy current inspection an on-condition action in this AD or to only require repetitive visual inspections. Prior to the publication of the NPRM, the FAA reviewed inspection reports and determined that the visual inspection might not detect corrosion. On the Model T210M airplane involved in the accident that prompted the NPRM, the fatigue crack initiated at a corrosion pit approximately 0.011-inch deep. Cracking could be difficult to detect by only a visual inspection since the lower spar cap is in compression during that inspection, and the eddy current inspection could detect cracking from undetected corrosion or damage. The FAA acknowledges that it has not received any reports of cracking in the carry-thru spar lower cap on Model 177-series airplanes; however, out of the 211 inspection reports received by the FAA as of January 13, 2023, there have been 120 reports of corrosion and at least 14 carry-thru spars have been removed from service due to corrosion or damage.

This AD requires that the technician completing the eddy current inspection be appropriately qualified as detailed in Textron Aviation Mandatory Service Letters SEL–57–08, Revision 2; and SEL–57–09, Revision 1.

The FAA has not changed this AD in regard to this issue.

2. Limited Availability of Inspectors

Comment summary: Several individual commenters expressed concern regarding the limited number of inspectors qualified and available of performing the eddy current inspection specified in the proposed AD. The commenters explained that it is difficult to locate qualified eddy current inspectors and for many airplane owners the inspectors are not local. One commenter requested that the FAA research how many facilities are willing to do the actions specified in the proposed AD and identify the lead time for scheduling the work.

FAA response: The FAA acknowledges that finding a person or facility qualified to do an eddy current inspection could be difficult in some geographic regions. While the FAA does not maintain a comprehensive listing of all repair stations capable of completing the specific eddy current inspections required by this AD, you may search for a repair station by location and rating on the FAA website: *av-info.faa.gov/repairstation.asp.* The FAA has no way to accurately determine any specific facility's willingness and scheduling availability to complete work at a given time.

As discussed above in section D., Requests Regarding Special Flight Permits, the FAA revised paragraph (m) of this AD to allow special flight permits with limitations. If scheduling an eddy current inspection is difficult, an owner, operator, or any interested party can apply for an AMOC using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC provides an acceptable level of safety for a different method or adjustment of the compliance time to address the unsafe condition, other than the one specified in the AD. Also, the FAA has revised paragraph (g)(4) in this AD to allow airplanes without detected corrosion, cracking, or other damage, or evidence of previous corrosion removal to complete the actions required by paragraph (h) of this AD within 200 hours TIS after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs first.

I. Requests Regarding Including a New Repetitive Inspection Requirement

Comment summary: Three individual commenters requested that the proposed AD include repetitive inspections. One of the commenters requested requiring repetitive inspections instead of replacing carry-thru spars that fail the inspection but do not have evidence of cracking. One of the commenters agreed that spars with cracking should be removed from service but a questionable spar with no cracking should be repetitively inspected instead of removed.

FAA response: The FAA agrees that repetitive inspections might be appropriate for future rulemaking. The FAA considers this AD to be interim action and is still evaluating what actions must be required if future rulemaking is issued that will be considered final action. If the FAA determines that repetitive inspections are necessary, then they could be included as a requirement. Adding new requirements to this AD would require public comment before adopting a final rule, and would require publishing a supplemental NPRM. Because of the identified unsafe condition, the FAA does not agree to delay this AD.

The FAA does not have data to support allowing carry-thru spars with excessive material removed to remain in service, even if they are repetitively inspected; however, the FAA would consider permitting individual carry-thru spars to remain in service and be repetitively inspected if an owner, operator, or any interested party applies for an AMOC using the procedures in paragraph (n) of this AD and includes substantiating data showing that the proposed AMOC provides an acceptable level of safety.

The FAA has not changed this AD in regard to this issue.

J. Requests Regarding Removing Certain Requirements

1. Corrective Action Requirements

Comment summary: Textron requested that paragraphs (h)(3) and (4) of the proposed AD, which address corrective actions for spars with damage or corrosion, be removed. Textron stated that these paragraphs are redundant because the inspection and rework specified in paragraph (g) of the proposed AD would have already addressed these actions.

FAA response: The FAA does not agree because paragraphs (h)(3) and (4) of this AD provide directions for what to do if damage or corrosion are detected during the eddy current inspection required by paragraph (h) of this AD. Paragraph (g) of this AD requires a visual inspection with a 10X magnification lens looking for corrosion, cracking, and damage and provides directions for what to do if damage or corrosion are found during the visual inspection.

The FAA has not changed this AD in regard to this issue.

2. Corrosion Protection Requirement

Comment summary: An individual commenter stated that applying corrosion coating would be costly and disruptive for parts that do not need corrosion prevention. The FAA infers that the commenter is requesting that the requirement to apply corrosion coatings specified in the proposed AD be removed.

FAA response: The FAA disagrees that the requirement in paragraph (i) of this AD to apply primer and CIC should be removed. Applying primer and CIC prevents corrosion and reduces the potential for crack initiation from corrosion. The carry-thru spar is a critical single load path structure with a demonstrated corrosion issue. Failure to sufficiently protect the structure from repeated corrosion increases the likelihood of additional cracking.

The FAA has not changed this AD in regard to this issue.

K. Requests Regarding Credit for Previous Actions

1. Credit for Previous Blending

Comment summary: AOPA, Cardinal Flyers Online, and several individual commenters requested that the proposed AD be revised to either give credit for previous blending done before the effective date of the final rule or to clarify what previous blending is acceptable. Three commenters requested that the proposed AD be revised to provide credit for carry-thru spars that were blended using the procedures specified in the Textron service letters instead of the requirement to replace a carry-thru spar or repair it using an AMOC. Ten commenters requested that the proposed AD be revised to allow previous blending of a carry-thru spar that is within the limits specified in the Textron service letters, even if the blending was not done using the procedures in the service letters. One commenter stated that it is unreasonable to require removal from service of a carry-thru spar with evidence of factory cleanup. The FAA infers that this commenter is requesting that carry-thru spars that have evidence of prior blending be permitted to remain in service.

Three commenters stated that, in the proposed AD, the language was unclear regarding corrosion removed prior to the effective date of the AD using the procedures in the Textron service letters. Paragraph (g)(2) of the proposed AD would require that carry-thru spars with evidence of previous blending either be removed from service or repaired using an AMOC. The commenters noted that paragraph (l) of the proposed AD does grant credit for the visual inspection required by paragraph (g) of the proposed AD, but does not clearly identify if credit is allowed for any previous corrosion removal completed as a result of the visual inspection required by paragraph (g) of the proposed AD.

Multiple commenters requested that the FAA provide credit for previous corrosion removal, even if logbook records are used. Commenters also raised the concern that owners who have made an effort to maintain a carry-thru spar in good condition would be penalized if the final rule fails to give credit for previous blending accomplished using the procedures in Textron SEL–57–08R2, or Textron SEL–57–09R1, as specified in paragraph (g) of the proposed AD. Ten commenters stated that previous blending should be covered by paragraph (g)(3) of the proposed AD and that all previous corrosion removal that does not exceed the blend limits specified in Textron SEL–57–08R2 and Textron SEL–57–09R1 should be permitted. Several commenters stated that the language in paragraph (l) of the proposed AD was as ambiguous and may penalize those parties who took action prior to publication of the final rule. Several commenters stated that most carry-thru spars were blended to some extent at the factory and that other carry-thru spars were blended using guidance from Textron.

To justify allowing the blended carry-thru spars to remain in service, one commenter provided information from an industry forum and from experience working with cast aluminum to support the view that Cessna blended carry-thru spars prior to delivery. This same commenter also cited concerns regarding the time needed to obtain an AMOC.

FAA response: The FAA partially agrees with the commenters' requests. The FAA agrees with granting credit for the blending of carry-thru spars completed prior to the effective date of this AD using Textron SEL–57–08R2 and Textron SEL–57–09R1, and the FAA acknowledges that some owners, operators, and maintenance personnel proactively complied with the procedures in that service information; however, compliance with previous actions is already addressed and no change is needed to this AD because paragraph (f) of this AD states ''Comply with this AD within the compliance times specified, unless already done.''

The FAA also agrees to revise paragraphs (l)(1) and (2) of this AD to clarify that owners and operators may take credit for corrosion removal (blending) completed before the effective date of this AD using the procedures in Textron Aviation Mandatory Single Engine Service Letter SEL–57–08, dated November 1, 2019 (Textron SEL–57–08); Textron Aviation Mandatory Single Engine Service Letter SEL–57–08, Revision 1, dated November 19, 2019 (Textron SEL–57–08R1); Textron Aviation Mandatory Single Service Letter SEL–57–09, dated November 19, 2019 (Textron SEL–57–09); Textron SEL–57–06; Textron Aviation Mandatory Single Engine Service Letter SEL–57–06, Revision 1, dated November 19, 2019 (Textron SEL–57–06R1); Textron SEL–57–07; or Textron SEL–57–07R1.

The FAA disagrees allowing credit for blending completed prior to the release of Textron SEL–57–06 and Textron SEL–57–07 without an evaluation and a repair approved as an AMOC. While the FAA does not have data supporting that Cessna blended the forged carry-thru spars prior to delivery, the FAA does recognize that some carry-thru spars were blended prior to publication of the NPRM. Blend limits, blend ratios, and surface finish must be addressed in the AMOC request. Locations previously blended that are included in the AMOC request will still be required to complete the eddy current inspection or provide evidence of previous completion.

2. Clarifying Credit for Previous Actions

Comment summary: Ten individual commenters requested clarification regarding credit for previous actions. Four commenters stated that paragraph (l) in the proposed AD was unclear. Seven commenters requested the FAA give credit for previous actions and not require that the actions be duplicated. One commenter stated that the proposed AD should provide full credit for any previous corrosion remediation performed using accepted maintenance procedures, so owners who previously addressed corrosion on their airplane are not punished.

FAA response: The FAA agrees that credit should be granted for work previously accomplished using the procedures in the Textron service letters and, as stated previously, the FAA has revised paragraph (l) of this AD to clarify that owners and operators may take credit for previously accomplished visual inspections and corrosion removal if completed in accordance with Textron service letters. The FAA finds that owners and operators are not being required to duplicate actions because paragraph (f) of this AD states ''Comply with this AD within the compliance times specified, unless already done;'' therefore, compliance for previous actions is granted to those who completed the required actions prior to the effective date of this AD in accordance with the applicable steps of the Accomplishment Instructions in Textron SEL–57–08R2 and Textron SEL–57–09R1.

Operators that performed repairs using accepted maintenance practices other than the Textron service letters must apply for an AMOC.

L. Requests Regarding AMOCs

1. Repair

Comment summary: One commenter requested clarification regarding what kinds of carry-thru spar repairs the FAA would approve through the AMOC process. The commenter stated that paragraph (o) of the proposed AD did not identify what kind of repairs might be acceptable and that the proposed AD left the decision for acceptable AMOCs to Textron, even though the FAA says Textron's corrective action identified in Textron SEL–57–09R1 is not adequate. The commenter explained that the lack of definition in paragraph (o) of the proposed AD regarding acceptable repairs makes it difficult for owners to estimate the condition of their carry-thru spars.

FAA response: The FAA disagrees that paragraph (n) of this AD (paragraph (o) in the proposed AD), requires clarification. The FAA has defined an acceptable repair based on available data. If the FAA knew of additional standard repairs, then those repairs would have been reviewed and, if found acceptable, included in this AD.

This AD specifies the same material removal limits as those identified in Textron SEL–57–09R1. It is possible that spars with damage that cannot be removed within the limits identified in Table 1 of Textron SEL–57–09R1 could still be found acceptable based on further evaluation. A repair on a carry-thru spar for which the material removed exceeds that identified in Table 1 of Textron SEL–57–09 would require an AMOC. Generally, the FAA, not Textron, must approve AMOCs; however, in this AD the FAA has delegated to Textron's Organization Designation Authorization the authority to evaluate carry-thru spars with material removal beyond that identified in Textron SEL–57–09R1 to salvage as many spars as possible. Textron might choose not to evaluate modified airplanes, as detailed in Textron SEL–57–09R1 and Textron SEL–57–08R2. Additionally, there is no requirement for an operator to have its spar evaluated by Textron. The owner or operator may develop its own AMOC request to present to the FAA for evaluation of any repair for which there is substantiating data.

The FAA would not limit AMOC options by defining those that are acceptable, as it is unrealistic for the FAA to preemptively identify and evaluate any potential AMOC option that may or may not be applicable to an airplane.

The FAA has not changed this AD in regard to this issue.

2. Alternative Inspection Method

Comment summary: Cardinal Flyers Online and four individual commenters requested that instead of the eddy current inspection a visual inspection be allowed with the airplane on jacks. The commenters explained that putting the wings on jacks would place the lower spar cap in tension, allowing cracking to be seen more readily during the visual inspection. One commenter proposed using a dye penetrant inspection in addition to supporting the wings with jacks.

FAA response: The FAA acknowledges that other inspection methods could be used for the carry-thru spar inspection; however, the FAA does not have data to support including these alternative inspection methods in this AD. An owner, operator, or any interested party may develop inspection procedures and submit an AMOC request to the FAA along with substantiating data showing that the proposed AMOC addresses the unsafe condition with an acceptable level of safety.

The FAA has not changed this AD in regard to this issue.

3. Alternative Corrosion Protection Options

Comment summary: Three commenters requested that the proposed AD allow for alternative corrosion protection options in addition to those specified in the proposed AD. Two of those commenters stated that the corrosion coatings specified in the proposed AD need to be expanded to include other products typically used in aviation and not just those identified by Textron. One commenter stated that a carry-thru spar that has been fully anodized and inspected should be equivalent to or better than a carry-thru spar with coating applied.

FAA response: The FAA agrees that alternative coating options could be acceptable. Using the procedures in paragraph (n) of this AD an owner, operator, or any interested party is welcome to identify an alternative coating and submit an AMOC request to the FAA along with substantiating data showing that the proposed AMOC addresses the unsafe condition with an acceptable level of safety.

M. Requests Regarding Cost Estimates

1. Labor Rate Is Unrealistic

Comment summary: Eight commenters requested the FAA increase the cost per hour estimates for the labor rate because $85 per work-hour is too low, does not reflect the true rate of labor, and is not attainable. One commenter requested that the FAA publish the method used to derive the hourly rate charged by maintenance shops.

FAA response: The FAA partially agrees with the commenters' requests. The FAA Office of Aviation Policy and Plans provides the labor rate of $85 per work-hour to use when estimating the labor costs of complying with the AD requirements. The FAA does agree to alter the estimated cost of the eddy current inspection from $85 per work-hour to a flat rate of $600 for one work-hour of contracted service to more accurately reflect the cost of eddy current inspection. The FAA revised the estimated costs and on-conditions costs tables in this AD to account for the $600 per work-hour contracted service associated with the eddy current inspection.

2. Estimated Work-Hours

Comment summary: Aviation Plus LLC and several individual commenters requested that the FAA increase the estimated number of work-hours for doing the carry-thru spar inspections because the estimated work-hours specified in the NPRM are too low and do not include on-condition costs for removing the oxygen systems and air conditioning systems for access to the inspection area. Two commenters stated that the costs to remove the airplane interior for access to do the inspections are not accurate. One commenter wanted to know the source of the estimated work-hours.

Eleven commenters requested that the proposed estimated cost for the eddy current inspection be increased and noted that the cost should include travel time to the grounded airplane or the cost to bring the eddy current inspector to the airplane.

One of these commenters stated that a flat rate is usually charged for an eddy current inspection, and four of these commenters stated that the cost range is usually between $400 and $1,000. The commenters provided various reasons for their requests.

FAA response: The FAA agrees that some of the estimated costs in this AD should be revised.

Textron provided the original estimated work-hours for preparing, inspecting, and reassembling an airplane. The FAA observed inspections completed by maintenance facilities and verified the personnel were able to complete the work within the estimates provided by Textron Aviation. The FAA acknowledges there is variability in the time necessary to complete the work, depending on a number of factors including airplane configuration and condition and the experience and capabilities of the individual(s) performing the work. The cost estimates provided in the NPRM did not include travel time to the grounded airplane or the cost to bring the eddy current inspector to the airplane.

The FAA partially agrees with the commenters' requests and has increased the estimated work-hours from 12 hours to 20 hours for removing and reinstalling the interior, removing the foam as applicable, and preparing the spar for visual and eddy current inspections. Additionally, in the Estimated costs table in this final rule the FAA has separated the eddy current inspection of the cap kick area into a separate line item with an estimate of $600 for contracted service work-hours and in the On-condition costs table included a line item for the on-condition eddy current inspection required due to corrosion or damage with an estimate of $600 for contracted service work-hours. Furthermore, the FAA added an additional line item that includes 5 work-hours for airplanes equipped with oxygen bottles and an additional line item that includes 3 work-hours for airplanes equipped with air conditioning.

2. Costs of Replacement Parts

Comment summary: Four commenters discussed the availability and cost of replacement carry-thru spars. The commenters wanted to know how the FAA determined the estimate of $30,000 for a replacement carry-thru spar. Another commenter stated that replacement carry-thru spars are not available from the manufacturer and the cost estimate for a replacement spar is low. The FAA infers that these commenters are requesting that the cost estimate for a replacement carry-thru spar be increased.

FAA's response: Textron provided the $30,000 cost estimate for a replacement carry-thru spar and has informed the FAA of its intention to start producing replacement carry-thru spars for Model 177-series airplanes. Textron is currently producing replacement carry-thru spars for Model 210-series airplanes, with a current cost of $21,367 for part number (P/N) 1210721–1 and $19,999 for P/N 2110020–1. The FAA revised the cost for a replacement carry-thru spar for Model 210-series airplanes to reflect these actual part costs.

3. Textron Share the Costs

Comment summary: One commenter requested that Textron share the costs of the inspections. The commenter explained that the corrosion issue exists because of Textron's carry-thru spar design, which permits leaking and condensation, and because Textron did not apply anti-corrosion coatings during manufacture.

FAA response: The FAA has no authority to enforce business contracts (actual or implied) between parties. The primary concern the FAA has when issuing an AD is addressing unsafe conditions on various aircraft flying in the United States. The FAA provides estimated costs information for complying with the requirements of an AD but does not control warranty coverage and cannot mandate that a manufacturer cover all associated costs.

The FAA has not changed the AD in regard to this issue.

N. Requests Regarding Primer and CIC Removal

Comment summary: Ten individual commenters requested that the proposed AD not require the removal of previously applied primer and CIC. The commenters stated that removing the previously applied primer and CIC could damage the carry-thru spar and would result in duplication of effort, increase in cost, and lack of credit granted for previous actions.

FAA response: The FAA agrees with the commenters' requests and this AD does not require removing properly applied primer and CIC that is in good condition. Paragraph (l) of this AD provides credit for previous actions, including the application of primer and CIC.

The FAA has not changed this AD in regard to this issue.

O. Request Regarding Spar Structural Capability

Comment summary: One commenter asked how much force is needed to break a carry-thru spar that does not pass an eddy current inspection.

FAA response: The FAA has no way of knowing precisely how much force would be required to break a carry-thru spar for which an eddy current inspection identified a response as detailed in Textron Aviation Mandatory Service Letters SEL–57–08R2 or SEL–57–09R1. The residual strength capability of the carry-thru spar is dependent on the type and amount of damage located on the part, as well as the specific geometry of the part.

The FAA has not changed this AD in regard to this issue.

P. Requests Regarding Limiting Spar Replacement

Comment summary: Two commenters requested that the FAA only require carry-thru spar replacement if absolutely necessary. The commenters explained that replacing a carry-thru spar could introduce additional safety issues because this action requires disassembling and reassembling major components, including the airframe, partial fuel and electrical systems, control systems, and structural repairs. One of the commenters mentioned that replacement carry-thru spars are difficult to find.

FAA response: The FAA acknowledges that replacing a carry-thru spar is a significant and costly effort and could be difficult to find. The FAA encourages owners, operators, and any interested party to pursue repair options prior to replacing an affected carry-thru spar and has provided a

means to apply for an AMOC using the procedures provided in paragraph (n) of this AD. The FAA has not changed this AD in regard to this issue.

Q. Requests Regarding Clarifying Minimum Part Thickness

Comment summary: Two individual commenters requested that the proposed AD specify the minimum acceptable part thickness after a carry-thru spar is reworked instead of setting a limit on the maximum amount of material that can be removed during rework. One commenter stated that the carry-thru spars were not manufactured with tight tolerances and could be thicker than the specification, allowing for more material to be removed. The other commenter stated that measuring the amount of material removed could be difficult if blending was done over a large area and suggested using data previously released by Textron that specified thickness limits for various stations along the spar.

FAA response: The FAA agrees that for Model 210- and 177-series airplanes, the forged 2014–T6 aluminum carry-thru spars have a wide range of manufacturing tolerances, both above and below the dimensions identified in the design data. The FAA also agrees that additional material, beyond that identified in Table 1 of Textron SEL–57–08R2 and Textron SEL–57–09R1, may be removed on some spars. However, the amount of additional material that can be removed varies from one spar to another and must be evaluated on an individual basis.

The FAA determined that applying the thickness limits identified in data previously released by Textron for various stations along the spar must be evaluated on an individual airplane basis, as that information was not originally developed to address the unsafe condition identified in this AD. The FAA encourages an owner, operator, or interested party with a corroded or damaged carry-thru spar that exceed the limits identified in Table 1 of Textron SEL–57–08R2 and Textron SEL–57–09R1 to apply for an AMOC using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC addresses the unsafe condition with an acceptable level of safety.

The FAA agrees that measuring the amount of material removed may be challenging and Textron provided suggestions for measuring the amount of material removed in step 6.B.(8) of the Accomplishment Instructions in Textron SEL–57–08R2 and Textron SEL–57–09R1. Additional guidance may be obtained by contacting Textron as detailed in paragraph (n)(3) of this AD.

The FAA has not changed this AD in regard to this issue.

R. Comment Regarding Reliability Centered Maintenance

Comment summary: One commenter suggested that the FAA find a solution to address the unsafe condition identified in the NPRM that promotes reliability centered maintenance (RCM). The commenter explained that RCM is a concept of maintenance planning to ensure that systems continue to do what their users require in their present operating context. Successful implementation of RCM will lead to increase in cost effectiveness, reliability, machine uptime, and a greater understanding of the level of risk that the organization is managing. The commenter stated that blanket ADs cost the general aviation community millions of dollars but do not increase safety, instead they increase risk by requiring unnecessary and invasive maintenance.

FAA response: The FAA lacks sufficient substantiating data to allow RCM for this AD. An owner, operator, or interested party can request to use RCM by applying for an AMOC using the procedures in paragraph (n) of this AD. The AMOC request must include substantiating data showing that the proposed AMOC addresses the unsafe condition with an acceptable level of safety.

The FAA has not changed this AD in regard to this issue.

S. Comment Regarding Tubing Corrosion

Comment summary: One commenter stated that the tubing corrosion issue only applies to a few airplanes rather than the entire fleet. The commenter did not request a change to the NPRM.

FAA response: Corrosion associated with tubing usually occurs in the web of the carry-thru spar, and this AD only requires inspecting the carry-thru spar lower cap. Although this AD does not specifically apply to corrosion associated with tubing, any corrosion found on the carry-thru spar lower cap, regardless of origin, is required to be addressed.

The FAA has not changed this AD in regard to this issue.

Additional Changes to This AD

The FAA did not carry over paragraph (l)(4) from the Credit for Previous Actions paragraph in the proposed AD into this AD. The FAA did not take away credit but removed a restriction. In the proposed AD, paragraph (l)(4) specified that, to receive credit, the protective coating and CIC had to have been applied to the airplane within 24 months after the date of completing the visual and eddy current inspection or within 12 months after the effective date of the AD, whichever occurs first. By the effective date of this final rule many airplanes will have completed the visual and eddy current inspections longer than 24 months ago. The airplanes in the applicability of this AD are not as likely to develop corrosion as the Model 210G through Model 210M airplanes that were included in the applicability of AD 2020–03–16 (the immediately adopted rule discussed previously), so the FAA determined that the requirement of corrosion application within 24 months after the visual and eddy current inspections was not necessary. The FAA did not want to penalize operators who had already completed the eddy current inspection by requiring they do the inspection again because they were outside of the 24-month limit. However, the requirement in paragraph (i) of this AD that CIC must be applied within 12 months after the effective date of this AD is unchanged.

Paragraph (h) of the proposed AD did not have explicit compliance times for completing the eddy current inspections, relying on paragraph (g) for the applicable compliance times for the eddy current inspections. For clarity, paragraph (h) now points to paragraph (g) for compliance times.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for the changes discussed previously, omitting the *Paperwork Reduction Act Burden Statement,* paragraph (n) in the proposed AD, and reidentifying the subsequent paragraphs, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service documents:

- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, Revision 2, dated August 3, 2020 (Textron SEL–57–08R2); and
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–09, Revision 1, dated August 3, 2020 (Textron SEL–57–09R1).

For the applicable airplanes specified, these service letters contain instructions for visually inspecting the carry-thru spar for corrosion, damage, and cracking and for completing an eddy current inspection. This service information also specifies applying protective coating and CIC.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed the following service letters related to this AD which, for the applicable airplanes specified, contain instructions for visually inspecting the carry-thru spar for corrosion and doing an eddy current inspection of the carry-thru spar regardless of whether corrosion was found and removed. This service information also contains instructions for applying CIC, but does not specify applying protective coating.

- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–06, dated June 24, 2019 (Textron SEL–57–06);
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–06, Revision 1, dated November 19, 2019;
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–07, dated June 24, 2019 (Textron SEL–57–07); and
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–07, Revision 1, dated November 19, 2019.

The FAA also reviewed the service letters listed below related to this AD, which, for the applicable airplanes specified, contain the same instructions and repair criteria as Textron SEL–57–08R2 and Textron SEL–57–09R1.

- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, dated November 1, 2019;
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, Revision 1, dated November 19, 2019; and
- Textron Aviation Mandatory Single Engine Service Letter, SEL–57–09, dated November 19, 2019.

Differences Between This AD and the Service Information

- Although Textron SEL–57–08R2 also applies to Models 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, and T210M airplanes, this AD does not. The FAA issued AD 2020–03–16 to address the immediate safety of flight for those airplanes.
- Textron SEL–57–08R2 and Textron SEL–57–09R1 specify inspecting all interior surfaces of the carry-thru spar; additionally, Textron SEL–57–09R1 specifies inspecting the lower surface of the outboard spar to wing attach lugs. This AD only requires inspecting the carry-thru spar lower cap, including the lower surface, edge, and upper surface of the lower cap. While the web, upper cap, and lugs of the carry-thru spar may be susceptible to corrosion, evidence does not support including inspection of these areas as part of this AD. The FAA will continue to monitor reports of corrosion on all areas of the carry-thru spar for potential future action.
- Textron SEL–57–08R2 and Textron SEL–57–09R1 do not specify an eddy current inspection on the carry-thru spar unless the amount of material removed in the blended area exceeds 0.010-inch deep but is within limits. This AD requires an eddy current inspection of all locations on the carry-thru spar lower cap where corrosion was removed. The fatigue crack on the Model T210M airplane that suffered the fatal in-flight break-up initiated from a corrosion pit approximately 0.011-inch deep in the lower cap kick area. The visual and less restrictive eddy current inspection requirements specified in Textron SEL–57–08R2 and Textron SEL–57–09R1 could miss similar fatigue cracking on airplanes currently operating in the field.
- Textron SEL–57–08R2 and Textron SEL–57–09R1 only specify an eddy current inspection of the lower cap kick of the carry-thru spar if corrosion is identified on the carry-thru spar cap. This AD requires a one-time eddy current inspection of the lower cap kick area of all affected airplanes, regardless of the results of the visual inspection. The fatigue crack on the Model T210M airplane that suffered the fatal in-flight break-up initiated in the lower cap kick area. Cracking and corrosion damage may be difficult to identify through visual inspection alone. The FAA will use the results of the one-time eddy current inspection of the lower cap kick area, in part, to determine the necessity of future rulemaking action.
- Textron SEL–57–08R2 and Textron SEL–57–09R1 specify contacting Textron for evaluation and disposition of certain damage. Instead, this AD requires removing the carry-thru spar from service or repairing it (if possible) in accordance with the AMOC procedures identified in paragraph (n) of this AD. Operators should work with Textron to develop a repair in support of an AMOC request.
- Textron SEL–57–08 R2 and Textron SEL–57–09R1 provide instruction allowing airplanes that have complied with Textron SEL–57–06 or Textron SEL–57–07 to complete the application of the protective coating and CIC within 200 flight hours or at the next annual inspection, whichever occurs first. This AD permits applying protective coating and CIC within 12 months after the effective date of this AD.

Interim Action

The FAA considers this AD to be an interim action. This AD requires one-time visual and eddy current inspections of the carry-thru spar lower cap for corrosion, cracking, and damage, corrective action if necessary, applying a protective coating and CIC, and reporting the inspection results to the FAA. The FAA will analyze the inspection results received to determine further rulemaking action.

Costs of Compliance

The FAA estimates that this AD affects 3,421 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Inspection (includes part removal for access, removal of foam, if required, visual inspection, and reassembly).	20 work-hours × $85 per hour = $1,700.	Not applicable	$1,700	$5,815,700.
Eddy current inspection of the cap kick area.	1 work-hour contracted service × $600 = $600.	Not applicable	600	$2,052,600.
Spar treatment (primer and corrosion inhibitor) *.	3.50 work-hours × $85 per hour = $297.50.	$340	637.50	$2,180,887.50.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Removal and reinstallation of oxygen bottles **.	5 work-hours × $85 per hour = $425.	Not applicable	425	Up to $1,453,925 (not all airplanes have oxygen bottles installed).
Removal and reinstallation of air conditioning components **.	3 work-hours × $85 per hour = $255.	Not applicable	255	Up to $872,355 (not all airplanes have air conditioning installed).
Reporting requirement	2 work-hours × $85 per hour = $170.	Not applicable	170	$581,570.

* Model 210-series airplanes may only require application of corrosion inhibitor, depending on the condition of the zinc chromate primer. Model 177-series airplanes may or may not require application of the primer, depending on the production year and the quality of any existing zinc chromate primer.

** Some Model 210-series airplanes are equipped with oxygen bottles in the area of the carry-thru spar. Some Model 210- and 177-series airplanes are equipped with air conditioning systems. Additional work-hours were included in the estimated costs to account for the additional time required to complete the AD requirements on these airplanes.

The FAA estimates the following costs to do any necessary repairs or replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrosion removal	2 work-hours × $85 per hour = $170	Not applicable	$170
On-condition eddy current inspection	1 work-hour contracted service × $600 = $600	Not applicable	600
Spar replacement—Model 210/T210–airplanes (P/N 1210721–1).	160 work-hours × $85 per hour = $13,600	$21,367	34,967
Spar replacement—Model 210/T210–airplanes (P/N 2110020–1).	160 work-hours × $85 per hour = $13,600	$19,999	33,599
Spar replacement—Model P210 airplane	220 work-hours × $85 per hour = $18,700	$19,999	38,699
Spar replacement—Model 177–series airplane	120 work-hours × $85 per hour = $10,200	$30,000	40,200

The amount of work-hours necessary to complete the eddy current inspection and corrosion removal will depend on the extent of the corrosion on the carry-thru spar. The FAA has no way of estimating the work-hours that may be required for those procedures. The FAA's cost estimate assumes a minimum of one hour contracted service for the eddy current inspection and two hours for the corrosion removal. If the operator needs an AMOC for repair, the FAA has no way of estimating the extent of damage or follow-on eddy current inspection that may be required. The FAA has no way of estimating the potential cost of those actions.

Replacement carry-thru spars are not currently available from Textron for Model 177-series airplanes. Textron no longer produces the current carry-thru spar design and is developing a new design. The FAA does not have data to determine the availability of replacement carry-thru spars from other sources.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–02–17 Textron Aviation Inc. (Type Certificate previously held by Cessna Aircraft Company): Amendment 39–22324; Docket No. FAA–2020–1078; Project Identifier AD–2020–00716–A.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Textron Aviation Inc. (Type Certificate previously held by Cessna Aircraft Company) Model 210N, 210R, P210N, P210R, T210N, T210R, 177, 177A, 177B, 177RG, and F177RG airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5310, Fuselage Main, Structure.

(e) Unsafe Condition

This AD was prompted by the in-flight break-up of a Model T210M airplane, due to fatigue cracking of the carry-thru spar that initiated at a corrosion pit and subsequent corrosion reports on other Model 210-series and Model 177-series airplanes. The FAA is issuing this AD to detect and correct cracking, corrosion, and other damage of the carry-thru spar lower cap, which, if not corrected, could lead to the carry-thru spar being unable to support the required structural loads and could result in separation of the wing and loss of airplane control.

(f) Compliance

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

(g) Visual Inspection

Within 200 hours time-in-service (TIS) after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first, prepare the carry-thru spar lower cap for inspection by following steps 4 and 5 of the Accomplishment Instructions in Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, Revision 2, dated August 3, 2020 (Textron SEL–57–08R2); or Textron Aviation Mandatory Single Engine Service Letter, SEL–57–09, Revision 1, dated August 3, 2020 (Textron SEL–57–09R1), as applicable to your airplane model. Visually inspect the carry-thru spar lower cap (including the lower surface, upper surface, and edge) with a 10X magnification lens looking for corrosion, cracking, and damage. You are not required to inspect the lower cap to web radius, spar web, upper cap, or lugs. Refer to the 'Spar Dimensions' and the 'Spar Detail' figures on page 7 of Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model, for the location of the specific spar features.

(1) If there is any cracking, before further flight, remove the carry-thru spar from service.

(2) If there is damage or evidence of previous removal of corrosion (blending), before further flight, either remove the carry-thru spar from service or repair the area using a method approved as specified in paragraph (n) of this AD. Comply with the requirements in paragraph (h) of this AD before further flight.

(3) If there is any corrosion, before further flight, remove the corrosion in the affected area by following steps 6.B.(1) through (7) of the Accomplishment Instructions in Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model, and then mechanically measure the depth of the blended area using a straight edge and feeler gauge or a depth gauge micrometer.

(i) If the material removed in the blended area exceeds the allowable blend limits specified in table 1 (including the notes) of Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model, before further flight, either remove the carry-thru spar from service or repair the area using a method approved as specified in paragraph (n) of this AD. Comply with the requirements in paragraph (h) of this AD before further flight.

(ii) If the material removed in the blended area does not exceed the allowable blend limits specified in table 1 (including the notes) of Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model, comply with the requirements in paragraph (h) of this AD before further flight.

(4) If the visual inspection did not detect corrosion, cracking, or damage and there is no evidence of previous removal of corrosion, comply with the requirements in paragraph (h) of this AD within 200 hours TIS after the effective date of the AD or within 12 calendar months after the effective date of the AD, whichever occurs first.

(h) Eddy Current Inspection

(1) At the applicable compliance time required by paragraph (g) of this AD, complete an eddy current inspection of the carry-thru spar lower cap for cracking, corrosion, and damage in the following areas in accordance with step 7 of the Accomplishment Instructions in Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model.

(i) The kick area as depicted in the 'Spar Dimensions' figure on page 7 of Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane. You must complete an eddy current inspection of the lower cap kick area of your airplane regardless of whether corrosion was found and removed as a result of the visual inspection in paragraph (g) of this AD.

(ii) All areas where corrosion was found and removed as a result of the inspection in paragraph (g) of this AD.

(2) If there is any cracking, before further flight, remove the carry-thru spar from service.

(3) If there is any damage, before further flight, either remove the carry-thru spar from service or repair the area using a method approved as specified in paragraph (n) of this AD. After completing the repair, repeat the eddy current inspection of the repaired area before further flight.

(4) If there is any corrosion, before further flight, remove the corrosion by following the requirements in paragraph (g)(3) of this AD. You must repeat the eddy current inspection and comply with paragraph (h) of this AD for the area where the additional material was removed, but you do not have to repeat the eddy current inspection of the kick area.

(i) Corrosion Protection

Within 12 calendar months after the effective date of this AD, apply protective coating and corrosion inhibiting compound (CIC) by following steps 9 and 10 of the Accomplishment Instructions in Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model.

(j) Installation Prohibition

As of the effective date of this AD, do not install on any airplane a carry-thru spar unless it has been inspected as required by paragraphs (g) and (h) of this AD and corrosion protection applied as required by paragraph (i) of this AD.

(k) Reporting Requirement

Within 30 days after completing the inspections required by this AD or within 30 days after the effective date of this AD, whichever occurs later, report to the FAA by email (*Wichita-COS@faa.gov*) all information requested in the Carry-Thru Spar Inspection Report Attachment to Textron SEL–57–08R2 or Textron SEL–57–09R1, as applicable to your airplane model.

(l) Credit for Previous Actions

(1) You may take credit for the visual inspection and corrosion removal required by paragraph (g) of this AD if you performed the visual inspection and corrosion removal before the effective date of this AD using Textron Aviation Mandatory Single Engine

Service Letter SEL–57–08, dated November 1, 2019 (Textron SEL–57–08); Textron Aviation Mandatory Single Engine Service Letter SEL–57–08, Revision 1, dated November 19, 2019 (Textron SEL–57–08R1); Textron Aviation Mandatory Single Service Letter SEL–57–09, dated November 19, 2019 (Textron SEL–57–09); Textron Aviation Mandatory Single Engine Service Letter SEL–57–06, dated June 24, 2019 (Textron SEL–57–06); Textron Aviation Mandatory Single Engine Service Letter SEL–57–06, Revision 1, dated November 19, 2019 (Textron SEL–57–06R1); Textron Aviation Mandatory Single Engine Service Letter, SEL–57–07, dated June 24, 2019 (Textron SEL–57–07); or Textron Aviation Mandatory Single Engine Service Letter, SEL–57–07, Revision 1, dated November 19, 2019 (Textron SEL–57–07R1).

(2) You may take credit for the eddy current inspection of the lower cap kick area and all locations where corrosion was removed on the carry-thru spar lower cap and the corrosion removal as specified in paragraph (h) of this AD if you performed the eddy current inspection and corrosion removal required before the effective date of this AD using Textron SEL–57–08, Textron SEL–57–08R1, Textron SEL–57–06, Textron SEL–57–06R1, Textron SEL–57–07, Textron SEL–57–07R1, or Textron SEL–57–09.

(3) You may take credit for the corrosion protection required by paragraph (i) of this AD if you performed those actions before the effective date of this AD using Textron SEL–57–08, Textron SEL–57–08R1, or Textron SEL–57–09.

(4) To take credit for any previous action, you must have provided a completed Carry-Thru Spar Inspection Report, an attachment to Textron SEL–57–06, Textron SEL–57–06 R1, Textron SEL–57–07, Textron SEL–57–07R1, Textron SEL–57–08, Textron SEL–57–08R1, or Textron SEL–57–09 to Textron Aviation Inc. before the effective date of this AD, or you must comply with paragraph (k) of this AD within 30 days after the effective date of this AD.

(m) Special Flight Permit

(1) This AD prohibits a special flight permit if the inspection identifies cracking in the carry-thru spar.

(2) Special flight permits, as described in 14 CFR 21.197 and 21.199, may be issued for airplanes on which corrosion was identified to operate to a location where the requirements of this AD can be accomplished.

(3) Special flight permits, as described in 14 CFR 21.197 and 21.199, may be issued for an airplane demonstrating evidence of previous blending for which credit for previous actions, as defined in paragraph (l), cannot be granted or for an airplane demonstrating any damage other than corrosion or cracking, but concurrence by the Manager, Wichita ACO Branch, FAA is required before issuance of the special flight permit. Send requests for a special flight permit to your local Flight Standards District Office.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (o) of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by a Textron Aviation, Inc. Unit Member (UM) of the Textron Organization Designation Authorization (ODA), that has been authorized by the Manager, Wichita ACO Branch, to make those findings. To be approved, the repair, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(o) Related Information

For more information about this AD, contact Bobbie Kroetch, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4155; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov*.

(p) Material Incorporated by Reference

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

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

(i) Textron Aviation Mandatory Single Engine Service Letter, SEL–57–08, Revision 2, dated August 3, 2020.

(ii) Textron Aviation Mandatory Single Engine Service Letter, SEL–57–09, Revision 1, dated August 3, 2020.

(3) For service information identified in this AD, contact Textron Aviation Inc., One Cessna Boulevard, Wichita, KS 67215; phone: (316) 517–6061; email: *structures@txtav.com;* website: *support.cessna.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 1, 2023.

Christina Underwood,

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

[FR Doc. 2023–02986 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1050; Project Identifier AD–2021–01257–T; Amendment 39–22316; AD 2023–02–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2007–10–04, which applied to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. AD 2007–10–04 required repetitive inspections to detect cracks in the horizontal stabilizer, and related investigative and corrective actions if necessary. Since the FAA issued AD 2007–10–04, it has been determined that certain compliance times and repetitive intervals must be reduced to address the unsafe condition. This AD continues to require the actions specified in AD 2007–10–04 with revised compliance times for certain actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 20, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1050; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information incorporated by reference in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness

Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1050.

FOR FURTHER INFORMATION CONTACT: Manuel Hernandez, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5256; email: *Manuel.F.Hernandez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007) (AD 2007–10–04). AD 2007–10–04 applied to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. The NPRM published in the **Federal Register** on September 15, 2022 (87 FR 56593). The NPRM was prompted by the determination that certain compliance times and repetitive intervals must be reduced for the high frequency eddy current (HFEC) surface and open hole inspections of the rear spar upper caps. The FAA received a report from Boeing of a crack found along fasteners in the upper rear spar that was longer than two inches during an inspection of the horizontal rear spar upper cap on a Model DC–9–82 (MD–82) airplane with 69,799 flight hours and 38,520 flight cycles. The crack was discovered prior to the compliance time intervals for the repetitive inspections required by AD 2007–10–04; it was determined that certain compliance times do not provide at least two opportunities to reliably detect dual origin cracks before they reach critical length.

In addition, since the FAA issued AD 2007–10–04, the legal name of the manufacturer has been changed from McDonnell Douglas Corporation to The Boeing Company on the most recent type certificate data sheet for the affected airplane models.

In the NPRM, the FAA proposed to continue to require the actions specified in AD 2007–10–04, with revised compliance times for certain actions. The FAA is issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

Discussion of Final Airworthiness Directive

Comments

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

Request To Revise ''Related Service Information Under 1 CFR Part 51''

Boeing requested that the FAA revise the description of the service information in the ''Related Service Information under 1 CFR part 51'' paragraph in the NPRM. The paragraph in the NPRM reads as follows: ''Corrective actions include stop drilling the end of the crack, trimming out the crack and installing filler, installing a horizontal stabilizer upper and lower aft skin panel splice, replacing the horizontal stabilizer upper and lower aft skin panel, installing bushings and cold working holes, removing the crack and performing a repair, replacing the horizontal stabilizer rear spar upper cap splice, and replacing the splice repair with a new horizontal stabilizer rear spar upper cap.'' Boeing suggested the FAA revise the text to read: ''Corrective actions to the horizontal stabilizer skin panel upper and lower aft skin panel include options for (1) stop drilling the end of the crack or trimming out the crack, and then doing a skin splice repair or replacing the skin at the given compliance time, (2) installing a skin panel splice, or (3) replacing the skin panel. Corrective actions to the horizontal stabilizer rear spar upper cap include options for (1) enlarging the hole to remove the crack, (2) performing a cap splice repair, (3) performing a cap splice repair and cold-working certain holes, (4) performing a cap replacement, or (5) performing a cap replacement and cold-working certain holes.'' Boeing reasoned that the revised text would distinguish between corrective actions specifically for skins and those for spar cap, per the Boeing Service Bulletin, and would also clarify that replacing a temporarily repaired structure is applicable only to the skin panel and not the spar cap; a repaired spar cap is inspected repetitively.

The FAA agrees and revised the ''Related Service Information under 1 CFR part 51'' paragraph in the final rule as requested.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021. This service information specifies procedures for repetitive eddy current inspections (HFEC or low frequency eddy current inspections, as applicable) of the horizontal stabilizer; and applicable corrective actions. Corrective actions to the horizontal stabilizer skin panel upper and lower aft skin panel include options for (1) stop drilling the end of the crack or trimming out the crack, and then doing a skin splice repair or replacing the skin at the given compliance time, (2) installing a skin panel splice, or (3) replacing the skin panel. Corrective actions to the horizontal stabilizer rear spar upper cap include options for (1) enlarging the hole to remove the crack, (2) performing a cap splice repair, (3) performing a cap splice repair and cold-working certain holes, (4) performing a cap replacement, or (5) performing a cap replacement and cold-working certain holes.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 22 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections (retained actions from AD 2007–10–04).	8 work-hours × $85 per hour = $680, per inspection cycle.	$0	$680 per inspection cycle	$14,960 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections (new proposed action).	Up to 20 work-hours × $85 per hour = $1,700 per inspection cycle.	0	Up to $1,700 per inspection cycle.	Up to $37,400 per inspection cycle.

The FAA estimates the following costs to do any necessary corrective actions (*e.g.,* repairs, replacements, installation) that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair, replacement and installation of upper or lower aft skin panel or splice.	Up to 656 work-hours × $85 per hour = $55,760	Up to $128,892	Up to $184,652.
Stop drill repair	4 work-hours × $85 per hour = $340	$0	$340.
Trim out	8 work-hours × $85 per hour = $680	$0	$680.
Install bushings and cold work	26 work-hours × $85 per hour = $2,210	$9,827	$12,037.
Crack removal and repair	6 work-hours × $85 per hour = $510	$2,033	$2,543.
Replace rear spar upper cap	368 work-hours × $85 per hour = $31,280	$36,402	$67,682.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007); and

■ b. Adding the following new AD:

2023–02–09 The Boeing Company: Amendment 39–22316; Docket No. FAA–2022–1050; Project Identifier AD–2021–01257–T.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007) (AD 2007–10–04).

(c) Applicability

This AD applies to all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the horizontal stabilizer in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2 and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0; and by a determination that certain compliance times and inspection intervals must be reduced. The FAA is issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, do an eddy current inspection to detect any cracking in the horizontal stabilizer and do all applicable repetitive inspections and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021. Do all applicable repetitive inspections and corrective actions at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, use the phrase ''the original issue date of this service bulletin,'' this AD requires using May 23, 2007 (the effective date of AD 2007–10–04).

(2) Where the Compliance Time columns of the tables in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, use the phrase ''the Revision 2 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007. This service information was incorporated by reference in AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007).

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD80–55A065, Revision 1, dated September 23, 2008. This service information is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2007–10–04 are approved as AMOCs for the corresponding provisions of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, that are required by paragraph (g) of this AD, except the AMOCs specified in paragraphs (j)(4)(i) through (iii) of this AD are not approved as AMOCs for this AD.

(i) FAA Letter Number 120L–14–226a, dated January 29, 2015.

(ii) FAA Letter Number 120L–15–384b, dated November 2, 2015.

(iii) FAA Letter Number 120L–10–345, dated August 3, 2010.

(k) Related Information

(1) For more information about this AD, contact Manuel Hernandez, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5256; email: *Manuel.F.Hernandez@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on January 24, 2023.

Christina Underwood,

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

[FR Doc. 2023–02934 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 81

[2341A2100DD/AAKC001030/A0A501010.999900]

Policy Guidance for Determining Eligibility for Organization Under the Alaska Indian Reorganization Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Policy guidance.

SUMMARY: This policy guidance clarifies the Department of the Interior's (Department) criteria and procedures for determining whether an entity is eligible to organize under the Alaska amendment to the Indian Reorganization Act.

DATES: This policy guidance is effective February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 738–6065; *oliver.whaley@bia.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1936, Congress enacted an amendment to the Indian Reorganization Act (25 U.S.C. 5108), (Alaska IRA) to allow groups of Indians in Alaska, not previously recognized as bands or tribes by the United States, to organize under the IRA, provided they could demonstrate ''a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district.'' *See* 25 U.S.C. 473a. In 1937, the Department of the Interior Secretary Harold Ickes approved ''Instructions'' describing the general characteristics of entities that may organize under the Alaska IRA and the procedural requirements for organizing such entities, but do not address the question of eligibility or the factors that should be considered in determining an entity's eligibility to organize under the Alaska IRA.

Policy Guidance

This policy guidance clarifies the criteria and procedures for evaluating petitions for organization under the Alaska IRA and supersedes all prior guidance issued on the same subject. In particular, this guidance supersedes the ''Instructions'' approved by Department of the Interior Secretary Harold Ickes in 1937.

The criteria and procedures outlined in this policy guidance are intended to guide the Department in making

consistent, substantive determinations as to whether an entity is eligible to organize under the Alaska IRA. The Alaska IRA establishes a ''common bond'' basis of organization for certain entities in Alaska, but is otherwise silent on the question of eligibility and gives no clear direction as to the Department's statutory responsibilities under the provision. This guidance proposes establishing a process for determining eligibility in a manner consistent with Federal Indian law and policy.

This process begins with the submission of an Alaska IRA petition to the Office of the Assistant Secretary—Indian Affairs (Office of the AS–IA). The Office of the AS–IA then reviews the petition. If Assistant Secretary—Indian Affairs (AS–IA) determines that a petitioning group satisfies the criteria established below and is eligible to organize under the Alaska IRA, the group will be included on the next list of federally recognized Indian tribes and can proceed with conducting a Secretarial election under 25 CFR part 81. A favorable determination of eligibility thus results in Federal recognition as an Indian tribe and entitles the group to interact with the United States on a government-to-government basis.

By recognizing that organization is a step that necessarily follows, rather than precedes, Federal recognition, this policy guidance brings the Alaska IRA in line with the Department's current practices and the modern notion of Tribal ''organization'' under the IRA. *See* 25 CFR part 81 (establishing the Department's procedures for conducting Secretarial elections under the IRA and other laws, which apply exclusively to federally recognized Indian tribes). The criteria in this policy guidance is accordingly designed to ensure that a group seeking to organize under the Alaska IRA is a socio-political entity capable of maintaining a government-to-government relationship with the United States, and that only those entities entitled to Federal recognition are being organized under the Alaska IRA. *See* H. Rep. No. 103–781 (1994) (explaining that Federal recognition is ''[a] formal political act'' that ''permanently establishes a government-to-government relationship between the United States and the recognized tribe as a 'domestic dependent nation,' '' and ''institutionalizes the tribe's quasi-sovereign status'').

Statutory Authority

The Department is issuing these criteria and procedures under 25 CFR part 81 and its authority over the management of all Indian Affairs under 25 U.S.C. 2.

Table of Contents

I. Criteria

The Department will apply the following criteria in evaluating requests for organization under the Alaska IRA, taking into account historical situations and time periods for which evidence is demonstrably limited or not available. Given the unique conditions in Alaska, the Department will evaluate each criteria in the context of the group's history, geographical location, culture, and social organization.

1. Common Bond

The petitioning group has maintained a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district on a substantially continuous basis from May 1, 1936, until the present. For purposes of this criteria, having a common bond means that the petitioner is bound together by their common interest and actions taken in common, and is distinguishable from other groups or associations. The claimed common bond must be clear and capable of statement and definition:

a. For petitioners seeking to organize on the basis of residence, there is no requirement that members of the group all live in one community or village.

b. For petitioners seeking to organize on the basis of occupation or association, a substantial share of the persons within the petitioning group must demonstrate participation in the activities constituting the common bond.

2. Political Influence or Authority

The petitioner has maintained political influence or authority over its members as an autonomous entity. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This criteria is to be understood flexibly, taking into account the limitations inherent in demonstrating historical existence of political influence or authority.

3. Governing Document

The petitioner has provided a copy of the entity's present governing document, including its membership criteria. In the absence of a governing document, the petitioner can provide a written statement describing in full its membership criteria and current governing procedures.

4. Descent

A significant and meaningful portion of the petitioner's membership is comprised of individuals who descend from the Alaska IRA-eligible entity that existed on May 1, 1936. Any members who do not descend genealogically from members of the Alaska IRA-eligible entity that existed on May 1, 1936, must be able to document their integration into the petitioning group.

5. Unique Membership

The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner is still eligible to organize under the Alaska IRA even if its membership is composed principally of persons whose names have appeared on the membership list of, or who have been otherwise associated with, a federally recognized Indian Tribe, if the petitioner demonstrates that:

a. It has functioned as a separate politically autonomous community by satisfying criteria (1) and (2) of this section; and

b. Its members have provided written confirmation of their membership in the petitioner.

6. Congressional Termination

Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

II. Petition Requirements

A petition to organize under the Alaska IRA should be submitted to the Office of the AS–IA. The Office of the AS–IA will accept the petition in any readable form. The petition should include the following:

a. A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria listed above;

b. Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria listed above; and

c. An official current membership list of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address.

If the petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner should be required to provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release.

III. Office of the AS–IA Review

Upon receipt of a petition, the Office of the AS–IA will review the petition and supporting documentation to determine whether the petitioner has provided sufficient evidence to meet each of the criteria listed above. Prior to completing its review, the Office of the AS–IA will advise the petitioner of any evidentiary gaps for the criteria and provide the petitioner with an opportunity to supplement or revise the petition. As part of its review of the petition, the Office of the AS–IA may also:

a. Initiate and consider other research for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status;

b. Request and consider timely submitted additional explanations and information from the petitioner; and

c. Consider any comments and evidence received from other parties to the extent they are relevant to the above criteria. The Office of Federal Acknowledgment (OFA), within the Office of the AS–IA, will provide the petitioner with any material received from other parties and provide the petitioner with the opportunity to respond to the material.

IV. AS–IA Determination

After the review of the petition, AS–IA will issue a decision determining whether the petitioner meets the above criteria and is eligible for organization under the Alaska IRA. The decision will summarize the evidence, reasoning, and analyses that are the basis for AS–IA's determination.

If AS–IA determines the petitioner is eligible for organization under the Alaska IRA, the petitioner can proceed with requesting a Secretarial election pursuant to 25 CFR part 81 and will be included on the next list of federally recognized Indian tribes published in the **Federal Register**.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–03017 Filed 2–10–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

Determination Regarding Excepted Foreign States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Determination.

SUMMARY: The Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States, is publishing the Committee's determination that two foreign states have established and are effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

DATES: Effective February 10, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua Jungman, Deputy Director of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–1749; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of excepted foreign states and additional information with respect to the Committee on Foreign Investment in the United States (CFIUS or the Committee) are available on the Committee's section of the Department of the Treasury website.

Notice of CFIUS Action

The Committee, taking into consideration the factors identified on the Committee's section of the Department of the Treasury website, has determined, under the authority of section 721 of the Defense Production Act of 1950, as amended, and 31 CFR 800.1001(a), that: (1) the United Kingdom of Great Britain and Northern Ireland has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security; and (2) New Zealand has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

This determination satisfies the second criterion in the definition of excepted foreign state under 31 CFR 800.218 with respect to New Zealand and the United Kingdom of Great Britain and Northern Ireland. Therefore, New Zealand and the United Kingdom of Great Britain and Northern Ireland are and will remain excepted foreign states absent further Committee action and notice in the **Federal Register**.

Paul Rosen,

Assistant Secretary for Investment Security.

[FR Doc. 2023–02533 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

31 CFR Part 802

Determination Regarding Excepted Real Estate Foreign States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Determination.

SUMMARY: The Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States, is publishing the Committee's determination that two foreign states have made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

DATES: Effective February 10, 2023.

FOR FURTHER INFORMATION CONTACT: Joshua Jungman, Deputy Director of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–1749; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of excepted real estate foreign states and additional information with respect to the Committee on Foreign Investment in the United States (CFIUS or the Committee) are available on the Committee's section of the Department of the Treasury website.

Notice of CFIUS Action

The Committee, taking into consideration the factors identified on

the Committee's section of the Department of the Treasury website, has determined, under the authority of section 721 of the Defense Production Act of 1950, as amended, and 31 CFR 802.1001(a), that: (1) New Zealand has made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security; and (2) the United Kingdom of Great Britain and Northern Ireland has made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

This determination satisfies the second criterion in the definition of excepted real estate foreign state under 31 CFR 802.214 with respect to New Zealand and the United Kingdom of Great Britain and Northern Ireland. Therefore, New Zealand and the United Kingdom of Great Britain and Northern Ireland are and will remain excepted real estate foreign states absent further Committee action and notice in the **Federal Register**.

Paul Rosen,

Assistant Secretary for Investment Security.

[FR Doc. 2023–02531 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0117]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—Mark Hahn Memorial 300 Mile PWC Endurance Race.

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Mark Hahn Memorial 300 Mile Personal Watercraft (PWC) Endurance Race special local regulation on the waters of Lake Havasu, Arizona from February 25 through February 26, 2023. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced from 7 a.m. until 6 p.m., each day from February 25, 2023, through February 26, 2023, for the location described in item no. 14 in table 1 to § 100.1102.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Shera Kim, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 for the Mark Hahn Memorial 300 Mile PWC Endurance Race on Lake Havasu, AZ for the location described in table 1 to § 100.1102, item no. 14 of that section, from 7 a.m. to 6 p.m. on February 25, 2023 through February 26, 2023. This action is being taken to provide for the safety of life on the navigable waterway during the race. Our regulation for recurring marine events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona), § 100.1102, table 1 to § 100.1102, item no. 14, specifies the location of the regulated area for the Mark Hahn Memorial 300 PWC Endurance Race, which encompasses portions of Lake Havasu. Under the provisions of § 100.1102, persons and vessels are prohibited from entering, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: February 7, 2023.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2023–02990 Filed 2–10–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0506; FRL–9895–02–R4]

Alabama; Rescission of the Finding of Failure To Submit a State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action; rescission of action.

SUMMARY: The Environmental Protection Agency (EPA) is rescinding its June 22, 2022, final action finding that the State of Alabama failed to submit a complete infrastructure State Implementation Plan (SIP) revision to satisfy the good neighbor interstate transport requirements of the Clean Air Act (CAA or Act) with respect to the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards).

DATES: The effective date of these actions is March 15, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0506. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday

through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009, or via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

A. Interstate Transport SIPs

CAA section 110(a) imposes an obligation upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of that NAAQS. CAA section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers to this type of SIP as an ''infrastructure'' SIP because it ensures that states can implement, maintain, and enforce the new or revised air standards. Within these requirements, CAA section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP for this sub-section is referred to as an ''interstate transport SIP.'' CAA section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in any other state or interfere with maintenance of the NAAQS in any other state. This action concerns SIP submissions from the State of Alabama regarding these requirements, also called collectively the ''good neighbor'' provision.

Pursuant to CAA section 110(k)(1)(B), EPA must determine within 60 days of receiving a SIP revision, but no later than six months after the date by which a state is required to submit a SIP revision, whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a ''finding of failure to submit.'' If EPA finds a state has failed to submit a SIP revision to meet its statutory obligation to address CAA section 110(a)(2)(D)(i)(I), then pursuant to CAA section 110(c)(1), EPA has not only the authority, but the obligation, to promulgate a Federal implementation plan (FIP) within two years to address the CAA requirement.

B. Background on the 2015 Ozone NAAQS, Alabama's SIP Revisions, Incompleteness Determination, and Finding of Failure To Submit

On October 1, 2015, EPA promulgated a revision to the 8-hour primary and secondary ozone NAAQS of 70 parts per billion (ppb), which is met when the 3-year average of the annual fourth highest daily maximum 8-hour concentration does not exceed 70 ppb.[1] Pursuant to the 3-year period provided in CAA section 110(a)(1), states' infrastructure SIP revisions addressing the revised standard were due on October 1, 2018.[2]

On August 20, 2018, Alabama submitted a SIP revision to address the interstate transport requirements for the 2015 8-hour ozone NAAQS. On February 22, 2022, EPA proposed to disapprove Alabama's August 20, 2018, SIP revision because the Agency preliminarily determined, based on updated EPA modeling, that Alabama's SIP revision did not meet CAA requirements to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. *See* 87 FR 9545. On April 21, 2022, Alabama withdrew its August 20, 2018, SIP revision.[3] Additionally, on that same day, Alabama provided EPA a new SIP revision to address the CAA good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS.

EPA evaluated the SIP revision that Alabama sent on April 21, 2022, for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and found it to be an incomplete SIP submission.[4] On June 14, 2022, EPA sent a letter to Alabama explaining the Agency's incompleteness determination. This letter is included in the docket for this action.[5]

On June 15, 2022, EPA signed a finding of failure to submit for the State of Alabama with respect to the April 21, 2022, SIP submission addressing interstate transport obligations for the 2015 ozone NAAQS. On the same day, EPA notified the State of this finding and posted a prepublication version of the finding of failure to submit to its website.

On June 21, 2022, Alabama resubmitted a SIP submission to address the CAA good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS, which included the April submission, along with additional information regarding completeness. On June 22, 2022, the Office of the Federal Register published the finding of failure to submit. *See* 87 FR 37235.

EPA reviewed Alabama's June 21, 2022, SIP submission on the merits and, on October 25, 2022, proposed to disapprove the submittal for failing to adequately address good neighbor requirements under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. *See* 87 FR 64412. EPA is finalizing disapproval of the June 21 submission in a concurrent action.

II. Rescission of the Finding of Failure To Submit for Alabama's Interstate Transport SIP Submission for the 2015 Ozone NAAQS

The June 21, 2022, submission has been deemed complete by operation of law and contains within it the April 21, 2022, version that was found incomplete. *See* CAA section 110(k)(1)(B). EPA acknowledges that the bases for incompleteness of the April 21, 2022, submission were relatively narrow. Alabama supplied additional information to EPA regarding completeness after receipt of the incompleteness letter from EPA. In light of this unique posture and the present circumstances surrounding the finding of failure to submit and subsequent developments, including EPA's decision to take substantive action on the June 21, 2022, version of the SIP submission, the Agency is rescinding the June 22, 2022, finding of failure to submit

[1] *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (October 26, 2015).

[2] EPA previously made findings of failure to submit with respect to interstate transport obligations for the 2015 8-hour ozone NAAQS for a number of other states. *See* 84 FR 66612 (December 5, 2019). As discussed further in this document, at the time EPA made those findings, Alabama had provided a complete submission, which it has subsequently withdrawn.

[3] See the docket for this action for a copy of Alabama's April 21, 2022, withdrawal letter.

[4] According to the CAA, a SIP revision may be considered ''complete'' by either of two methods: (1) EPA may make a determination that a SIP is complete under the ''completeness criteria'' set out at 40 CFR part 51, appendix V, *see* CAA section 110(k)(1); or (2) a SIP may be deemed complete by operation of law if EPA has failed to make a completeness determination within six months after receipt of the State's SIP submission, *see* CAA section 110(k)(1)(B).

[5] While this letter is included in the docket for this action, and explains the deficiencies in the April 21, 2022, document, EPA is not reopening its determination of incompleteness in this action.

contemporaneous with its separate final action disapproving Alabama's June 21, 2022, version of the SIP submission.[6]

The Agency makes no determination here that the finding of failure to submit was issued in error. EPA also notes that, with respect to the CAA obligations at issue here, it remains the Agency's expressed intention to finalize FIPs as needed for upwind states [7]—including, potentially, Alabama—within the two-year statutory timeframe for EPA to promulgate a FIP following either a disapproval of or a finding of failure to submit a required SIP.

This remains true for Alabama whether the two-year FIP deadline would have run from the date of the finding of failure to submit or is dated from the date of the disapproval action.

EPA's obligation to promulgate a FIP addressing Alabama's good neighbor obligations for the 2015 ozone NAAQS runs from the date of the action disapproving the June 21, 2022, version of the submission.

III. Environmental Justice Considerations

This action rescinds the procedural finding that Alabama failed to submit a SIP revision to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. EPA did not conduct an environmental justice analysis for this action because it will not directly affect the air emissions of particular sources. Because this action will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

IV. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As discussed above, EPA is concurrently finalizing action on Alabama's June 21, 2022, SIP submittal and will be subject to the same obligations as it would be under a finding of failure to submit (specifically, to promulgate a FIP or approve a SIP). Thus, notice and comment are impracticable and unnecessary with respect to issuance of this final action, as they were with the original finding of failure to submit (FFS). EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

V. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning 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

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This action rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS.

C. Regulatory Flexibility Act (RFA)

This action is not subject to notice and comment requirements because the Agency has invoked the Administrative Procedure Act (APA) ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (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. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. No tribe is subject to the requirement to submit a transport SIP under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health 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 it rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS and does not directly or disproportionately affect children.

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

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action rescinds the procedural finding that Alabama failed to submit a SIP revision to address CAA

[6] Because the incompleteness letter returned the April 21, 2022, submission to the State, there is no further action that needs to be taken on Alabama's April 21, 2022, submission. *See* CAA section 110(k)(1)(C).

[7] *See* 87 FR 20036, 20038 (April 26, 2022), proposing FIPs for Alabama and 25 other states, with intention to finalize in time for emissions reductions to begin in the 2023 ozone season.

section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS and does not have a direct connection to levels of air pollutants or controls to address air emissions.

K. Congressional Review Act (CRA)

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

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 31, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–02408 Filed 2–10–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 29
Monday, February 13, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0109]

RIN 3150–AK86

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewal of Initial Certificate and Amendment Nos. 1 Through 15

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to renew, for 40 years, the initial certificate (Amendment 0) and Amendment Nos. 1 through 15 of Certificate of Compliance No. 1014. The renewal of the initial certificate and Amendment Nos. 1 through 15 would revise the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components important to safety of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations.

DATES: Submit comments by March 15, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0109, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

FOR FURTHER INFORMATION CONTACT: Kristina Banovac, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov* and James Firth, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6628, email: *James.Firth@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0109 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0109. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2022–0109 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on May 1, 2023. However, if the NRC receives any significant adverse comment by March 15, 2023, then the NRC will publish a document that withdraws the

direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs and for the renewal of the cask design approval. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241) that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014. On August 28, 2007 (72 FR 49561), the NRC amended the scope of the general licenses issued under 10 CFR 72.210 to include the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 52. On February 16, 2011 (76 FR 8872), the NRC amended subparts K and L in 10 CFR part 72, to extend and clarify the term limits for certificates of compliance and revised the conditions for spent fuel storage casks renewals, including adding requirements for the safety analysis report to include time-limited aging analyses and a description of aging management programs. The NRC also clarified the terminology used in the regulations to use ''renewal'' rather than ''reapproval'' to better reflect that extending the term of a currently approved cask design is based on the cask design standards in effect at the time the certificate of compliance was approved rather than current standards.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Certificates of Compliance and Proposed Technical Specifications	
Proposed Renewed Certificate of Compliance No. 1014 (Amendment No. 0)	ML22098A235.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 0.	ML22098A236.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 0.	ML22098A237.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 1	ML22098A238.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 1.	ML22098A239.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 1.	ML22098A240.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 2	ML22098A241.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 2.	ML22098A242.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 2.	ML22098A243.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 3	ML22098A244.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 3.	ML22098A245.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 3.	ML22098A246.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 4	ML22098A247.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 4.	ML22098A248.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 4.	ML22098A249.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 5	ML22098A250.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 5.	ML22098A251.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 5.	ML22098A252.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 6	ML22098A253.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 6.	ML22098A254.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 6.	ML22098A255.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 7	ML22098A256.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A257.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A258.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A259.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 7.	ML22098A260.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 8, Revision 1	ML22098A261.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A262.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A263.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A264.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 8, Revision 1.	ML22098A265.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 9, Revision 1	ML22098A266.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A267.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A268.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A269.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 9, Revision 1.	ML22098A270.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 10	ML22098A271.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A272.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A273.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A274.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 10.	ML22098A275.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 11	ML22098A276.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A277.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A278.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A279.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 11.	ML22098A280.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 12	ML22098A281.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A282.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A283.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A284.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 12.	ML22098A285.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 13	ML22098A286.

Document	ADAMS accession No./ **Federal Register** citation
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A287.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A288.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A289.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 13.	ML22098A290.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 14	ML22098A291.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A292.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A293.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A294.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 14.	ML22098A295.
Proposed Renewed Certificate of Compliance No. 1014, Amendment No. 15	ML22098A296.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A297.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A298.
Proposed Renewed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A299.
Proposed Renewed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A300.
Proposed Renewed Certificate of Compliance No. 1014 Appendix C: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A301.
Proposed Renewed Certificate of Compliance No. 1014 Appendix D: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 15.	ML22098A302.
Preliminary Safety Evaluation Report	
Preliminary Safety Evaluation Report for the HI–STORM 100 Cask System: Certificate of Compliance No. 1014 Renewal Docket No. 72-1014.	ML22098A303.
Environmental Documents	
Environmental Assessment for Proposed Rule Entitled, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites.'' (1989).	ML051230231.
''Environmental Assessment for the Holtec International HI–STORM 100U Underground Cask System'' (2009)	ML091060766.
''Environmental Assessment and Finding of No Significant Impact for the Final Rule Amending 10 CFR Part 72 License and Certificate of Compliance Terms'' (2010).	ML100710441.
Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report (NUREG–2157, Volumes 1 and 2) (2014).	ML14198A440 (package).
''Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites'' Final Rule (July 18, 1990)	55 FR 29181.
''List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision 7'' (October 13, 2009)	74 FR 52387.
''License and Certificate of Compliance Terms'' (February 16, 2011)	76 FR 8876.
Holtec International, HI–STORM 100 Renewal Application Documents	
''Holtec International HI–STORM 100 Storage Certificate of Compliance Renewal Application.'' Holtec Letter 5014890.	ML20049A081 (package).
''Holtec International, Submittal of RAI Responses on HI–STORM 100 License Renewal.'' Holtec Letter 5014911	ML20290A819 (package).
''Holtec International, Submittal of RAI Responses on HI–STORM 100 License Renewal [submittal of report HI–2002396, Revision 5].'' Holtec Letter 5014912.	ML20303A254 (package).
''Holtec International, Submittal of RAI Clarification Responses on HI–STORM 100 License Renewal.'' Holtec Letter 5014922.	ML21109A367 (package).
''Holtec International, Submittal of RAI Clarification Responses on HI–STORM 100 License Renewal—Updated Attachment.'' Holtec Letter 5014923.	ML21113A201 (package).
Certificate of Compliance Renewal Application for the HI–STORM 100 Dry Storage System: Certificate of Compliance No. 1014, Docket Number 72–1014.	ML21113A203.
Holtec International, HI–STORM 100 Final Safety Analysis Reports	
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI-2002444, Revision 18. (non-proprietary) (May 2019).	ML19150A405.
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI-2002444, Revision 19. (non-proprietary) (April 2020).	ML20121A317.
''Final Safety Analysis Report for the HI–STORM 100 Cask System.'' HI-2002444, Revision 20. (non-proprietary) (June 2020).	ML20167A018.

Document	ADAMS accession No./ **Federal Register** citation
Other Documents	
"Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel." NUREG–1927, Revision 1. Washington, DC. June 2016.	ML16179A148.
"Managing Aging Processes in Storage (MAPS) Report." Final Report. NUREG-2214. Washington, DC. July 2019	ML19214A111.
"General License for Storage of Spent Fuel at Power Reactor Sites" (July 18, 1990)	55 FR 29181.
"List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition" (May 1, 2000)	65 FR 25241.
"License and Certificate of Compliance Terms" (February 16, 2011)	76 FR 8872.
"Agreement State Program Policy Statement; Correction" (October 18, 2017)	82 FR 48535.
Nuclear Energy Institute NEI 14–03, Revision 2, "Format, Content and Implementation Guidance for Dry Cask Storage Operations-Based Aging Management," (2016).	ML16356A210.
Regulatory Guide 3.76, Revision 0, "Implementation of Aging Management Requirements for Spent Fuel Storage Renewals." July 2021.	ML21098A022.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0109.

Dated: January 31, 2023.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Executive Director for Operations.

[FR Doc. 2023–03003 Filed 2–10–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–TP–0019]

RIN 1904–AF08

Energy Conservation Program: Test Procedure for Compressors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy ("DOE") proposes to amend the test procedure for compressors to correct an error. DOE also proposes to amend the definition of air compressor to include a minor clarification and revise a typographical error. DOE is seeking comment from interested parties on the proposals.

DATES: DOE will accept comments, data, and information regarding this proposal no later than April 14, 2023. See section V, "Public Participation," for details.

DOE will hold a public meeting via webinar on Wednesday, March 22, 2023, from 1:00 p.m. to 4:00 p.m. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2022–BT–TP–0019. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–TP–0019, by any of the following methods:

Email: Compressors2022TP0019@ee.doe.gov. Include the docket number EERE–2022–BT–TP–0019 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc ("CD"), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles ("faxes") will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-TP-0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to maintain the previously approved incorporation by reference of the testing methods contained in the following commercial standards into 10 CFR part 431:

ISO 1217:2009(E), "Displacement compressors—Acceptance tests," July 1, 2009, sections 2, 3, and 4; sections 5.2, 5.3, 5.4, 5.6, 5.9; paragraphs 6.2(g), and 6.2(h) including Table 1; Annex C (excluding C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5). ISO 1217:2009/Amd.1:2016(E), Displacement compressors—Acceptance tests (Fourth edition); Amendment 1: "Calculation of isentropic efficiency and relationship with specific energy," April 15, 2016, sections 3.5.1 and 3.6.1; sections H.2 and H.3 of Annex H.

Copies of ISO 1217:2009(E) and of ISO 1217:2009/Amendment 1:2016(E) may be purchased from ISO at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, or by going to *www.iso.org*.

See section IV.M of this document for additional information about ISO 1217:2009(E) and ISO 1217:2009/Amendment 1:2016(E).

Table of Contents

I. Authority and Background

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA,[1] added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. Under EPCA, DOE may include a type of industrial equipment, including compressors, as covered equipment if it determines that doing so is necessary to carry out the purposes of Part A–1. (42 U.S.C. 6311(1)(L), 6311(2)(B)(i), and 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment to conserve the energy resources of the Nation. (42 U.S.C. 6312(a)). On November 15, 2016, DOE published a final rule, which determined that coverage for compressors is necessary to carry out the purposes of Part A–1 of Title III of EPCA. 81 FR 79991.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297). DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6297)

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)–(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including compressors, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish a proposed test procedure in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedure. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedure. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(ii))

B. Background

DOE's existing test procedure for compressors appears at Title 10 of the Code of Federal Regulations (CFR) part

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

431, subpart T, appendix A (''Uniform Test Method for Certain Air Compressors'').

As stated, DOE published a final rule on November 15, 2016, in which DOE determined that coverage of compressors is necessary to carry out the purposes of Part A–1 of Title III of EPCA. 81 FR 79991. DOE's test procedure for determining compressor energy efficiency of certain varieties of compressors was established in a final rule published on January 4, 2017 (hereafter, the ''January 2017 Final Rule''). 82 FR 1052.

On May 17, 2019, DOE published a notice of petition for rulemaking and request for comment regarding the test procedure for compressors in response to a petition from Atlas Copco North America (''Atlas Copco''). 84 FR 22395. Atlas Copco's petition was received on April 17, 2019 and requested that DOE amend the compressors test procedure to specify that manufacturers could satisfy the test procedure requirements by using the industry test method for rotary air compressor energy efficiency, ISO 1217:2009. In the notice of petition for rulemaking, DOE sought comment regarding the petition as to whether to proceed with the petition, but took no position at the time regarding the merits of the suggested rulemaking or the assertions made by Atlas Copco. 84 FR 22395.[2]

On January 10, 2020, DOE published a final rule for energy conservation standards for air compressors (hereafter, the ''January 2020 ECS Final Rule''). 85 FR 1504. Compliance with the energy conservation standards established in the January 2020 ECS Final Rule is required for compressors manufactured starting on January 10, 2025. 10 CFR 431.345.

On May 6, 2022, DOE issued a Request for Information (''RFI'') for a test procedure for compressors to consider whether to amend DOE's test procedure for compressors (hereafter, the ''May 2022 RFI''). 87 FR 27025. To inform interested parties and to facilitate this process, DOE identified certain issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. On June 6, 2022, DOE granted a 14-day extension to the public comment period, allowing comments to be submitted until June 20, 2022. 87 FR 34220.

In general, representations of compressor performance must be in accordance with the DOE test procedure. (42 U.S.C. 6314(d)). However, DOE guidance (issued Dec. 6, 2017; revised Jun. 8, 2018) stated that it would discretionarily not enforce this requirement until compliance with a standard is required or a labeling requirement is established. On May 2, 2022, DOE announced that it was suspending the enforcement policy regarding the test procedure for air compressors and removed the policy from the DOE enforcement website.

Following retraction of the enforcement policy and to aid manufacturers in understanding DOE's regulatory requirements regarding the test procedure and forthcoming energy conservation standards, DOE held a ''Compressors Regulations 101'' webinar on May 24, 2022. The webinar reviewed testing, rating, certification, and compliance responsibilities.[3]

DOE received comments in response to the May 2022 RFI from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MAY 2022 RFI

Commenter(s)	Reference in this NOPR	Comment No. in the docket	Commenter type
Saylor-Beall Air Compressors	Saylor-Beall	2	Manufacturer.
Compressed Air & Gas Institute	CAGI	3, 11	Trade Association.
Jenny Products Inc	Jenny Products	4	Manufacturer.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison.	CA IOU's	5, 14	Utility Companies.
Northwest Energy Efficiency Alliance	NEEA	5, 16	Efficiency Organization.
CASTAIR Inc	CASTAIR	6	Manufacturer.
The People's Republic of China	People's Republic of China	8	Foreign Government.
Compressed Air Systems	Compressed Air Systems	10	Manufacturer.
Appliance Standard Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, and New York State Energy Research and Development Authority.	ASAP, ACEEE, NRDC, and NYSERDA.	12	Efficiency Organizations.
Ingersoll Rand	Ingersoll Rand	13	Manufacturer.
Northwest Power and Conservation Council	NPCC	16	Efficiency Organization.
Kaeser Compressors	Kaeser Compressors	17	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to amend subpart T of title 10 of the Code of Federal Regulations, part 431 (10 CFR part 431), which contains definitions, materials incorporated by reference, and the test procedure for determining the energy efficiency of certain varieties of compressors as follows:

1. Revise the formula for pressure ratio at full-load operating pressure currently in 10 CFR part 431, subpart T to correct a typographical error, and

2. Modify the current definition of ''air compressor'' to clarify that compressors with more than one compression element are still within the scope of this test procedure, and to revise the typographical error of ''compressor element'' to ''compression elements.''

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

[2] Associated documents are available in the rulemaking docket at *www.regulations.gov/docket?D=EERE-2019-BT-PET-0017.*

[3] The slide material presented during the webinar has been published on DOE's website: *www.energy.gov/sites/default/files/2022-05/compressors-101.pdf.*

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for compressors. (Docket No. EERE–2022–BT–TP–0019, which is maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Pressure ratio at full-load operating pressure formula in 10 CFR part 431, subpart T contains an error, as the wrong formula is presented.	Correct the pressure ratio at full-load operating pressure formula in 10 CFR part 431, subpart T.	Error Correction.
Air Compressor Definition: A compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.	Air Compressor Definition: A compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.	Clarification.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR would more accurately or fully comply with the requirements that test procedures be reasonably designed to produce test results which reflect energy use during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(1)) DOE has also tentatively determined that these proposed amendments, if made final, would not alter the measured efficiency of compressors, require retesting or recertification, or alter the cost of testing. Discussion of DOE's proposed actions and discussion of additional topics raised in or in response to the May 2022 RFI are included in section III of this NOPR.

III. Discussion

In the following sections, DOE proposes certain amendments to its test procedure for compressors. For each proposed amendment, DOE provides relevant background information, explains why the amendment merits consideration, discusses relevant public comments, and proposes a potential approach.

A. Scope of Applicability

DOE's test procedure applies to a compressor that meets all of the following criteria: is an air compressor; is a rotary compressor; is not a liquid ring compressor; is driven by a brushless electric motor; is a lubricated compressor; has a full-load operating pressure of 75–200 psig; is not designed and tested to the requirements of the American Petroleum Institute Standard 619; has full-load actual volume flow rate greater than or equal to 35 cubic feet per minute (cfm), or is distributed in commerce with a compressor motor nominal horsepower greater than or equal to 10 horsepower (hp); and has a full-load actual volume flow rate less than or equal to 1,250 cfm, or is distributed in commerce with a compressor motor nominal horsepower less than or equal to 200 hp. 10 CFR 431.344.

DOE received comments both supporting and opposing scope changes. CAGI, supported by Kaeser Compressors, stated that the current scope is adequate and supported maintaining the current scope of the Test Procedure. (CAGI, No. 11 at p. 1; Kaeser Compressors, No. 17 at p. 1) Ingersoll Rand commented that no changes or developments in the industry or to usage patterns of air compressors would warrant changing the scope, and recommended that the current scope be re-affirmed. (Ingersoll Rand, No. 13 at p. 1) ASAP, ACEEE, NRDC, and NYSERDA, on the other hand, encouraged DOE to consider expanding the scope of the test procedure to include additional air compressor types. (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 1)

As discussed in more detail in the following sections, DOE is not proposing changes to the scope of test procedures as there is uncertainty around whether the test procedure would produce representative results for these additional compressor types. OE may consider test procedure scope expansion, including related comments discussed in this NOPR, in a future test procedure rulemaking.

DOE responds to specific scope expansion topics in sections III.A.1 through III.A.7 of this NOPR.

1. Reciprocating Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to rotary compressors (and therefore does not apply to reciprocating compressors). 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding the continued exclusion of reciprocating air compressors from the scope of the test procedure pertaining to compressors.

Several parties commented in support of maintaining the test procedure scope with respect to reciprocating compressors. Saylor-Beall stated that reciprocating air compressors should remain out of scope and should not be tested using the current test procedure because operating a reciprocating compressor at full load increases its heat above what would be expected in normal intermittent use, causing reduced air flow, leading to potentially understated efficiency measurements in normal operation, which could lead to erroneous judgements. (Saylor-Beall, No. 2 at p. 1–2) Jenny Products commented that reciprocating compressors will require a completely different set of test criteria and procedures, are inherently different from rotary compressors, and that any attempt to apply isentropic efficiency standards to reciprocating compressors will result in highly inaccurate results. (Jenny Products, No. 4 at p. 1–2) CASTAIR commented that it would not make sense to apply an efficiency test using a continuous duty cycle when most reciprocating compressors are meant for intermittent duty. CASTAIR also mentioned that requiring reciprocating compressors to use the current DOE test procedure would inevitably force customers into machines that do not accurately fit their applications, resulting in an overall efficiency decrease. (CASTAIR, No. 6 at p. 1–2) Compressed Air Systems commented that that there is no industry support for applying the current DOE test procedure to reciprocating air compressors, and that this test procedure is not appropriate nor effective for evaluating reciprocating air compressors. (Compressed Air Systems, No. 10 at p. 5)

Conversely, NEEA and NPCC commented that reciprocating air compressors should be included in the scope of this test procedure rulemaking. NEEA and NPCC stated that the ISO 1217:2009 standard includes both rotary and reciprocating compressors, and by not including reciprocating compressors, DOE is overlooking an opportunity to gather data on the most common compressor type. NEEA and NPCC also mentioned that there is

notable energy savings potential in regulating reciprocating air compressors. (NEEA and NPCC, No. 16 at p. 2–3)

At this time, DOE is not proposing to expand the scope of the test procedure to include reciprocating compressors. DOE will continue reviewing potential test procedures for reciprocating compressors, including existing test methods, and may consider expanding the scope of the test procedure to include these compressors in a future test procedure rulemaking.

DOE seeks comment regarding its proposal to not include reciprocating compressors within the scope of test procedure applicability.

See section V.E of this document for a list of issues on which DOE seeks comment.

2. Centrifugal Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to rotary compressors (and therefore does not apply to centrifugal air compressors). 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding centrifugal compressors.

In a joint comment, ASAP, ACEEE, NRDC, and NYSERDA encouraged DOE to consider expanding the scope of the test procedure to include centrifugal compressors, because such inclusion would ensure that purchasers have access to consistent information about compressor efficiency. (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 1–2) The CA IOU's also encouraged DOE to evaluate expanding the scope of the test procedure to cover centrifugal air compressors, and to evaluate their suitability when incorporated into the uniform test method. (CA IOU's, No. 14 at p. 6–7)

The CA IOU's encouraged DOE to evaluate expanding the scope of the test procedure to cover centrifugal air compressors, and to evaluate their suitability when incorporated into the uniform test method. (CA IOU's, No. 14 at p. 6–7).

At this time, DOE is not proposing to expand the scope of the test procedure to include centrifugal compressors. DOE continues to review and consider potential test methods for centrifugal compressors and may consider developing test procedures for centrifugal compressors as part of a future rulemaking process.

DOE seeks comment regarding its proposal not to include centrifugal compressors within the scope of test procedure applicability.

DOE seeks comment regarding whether other dynamic compressor varieties than centrifugal compete with the air compressor categories discussed in this NOPR.

See section V.E of this document for a list of issues on which DOE seeks comment.

3. Compressor Motor Nominal Horsepower

As stated in section III.A of this document, the current test procedure for compressors applies to compressors that have a full-load operating pressure of between 75 to 200 psig (inclusive) and either (1) a full-load actual volume flow rate of between 35 cfm and 1,250 cfm (inclusive) or (2) compressor motor nominal horsepower of between 10 hp and 200 hp. 10 CFR 431.344.

Because compressor full-load actual volume flow rate scales (approximately) linearly with compressor motor nominal horsepower and (approximately) inversely with full-load operating pressure, the compressor motor nominal horsepower at which the upper flow-based limit of 1,250 cfm would be reached is a function of output pressure. Specifically, 1,250 cfm would include all of the applicable compressor market within the scope of the compressors test procedure at all but the lower end of the pressure-based range (*i.e.,* 75 psig).

ASAP, ACEEE, NRDC, and NYSERDA also stated that DOE should consider expanding the scope of the test procedure to include compressors greater than 200 HP, because this additional category represents a significant portion of the market (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 1–2). The CA IOU's also encouraged DOE to evaluate expanding the scope of the Test Procedure to cover rotary lubricated models up to 500 HP. They presented a table mentioning that the range of 201 hp to 500 hp contributes to 25 percent of total air compressor energy consumption (CA IOU's, No. 14 at p. 6–7).

Because of the direct mathematical relationship between the three values in question (*i.e.,* output pressure, output flow, motor power), changing one would likely require changing at least one other. Although not explicitly stated, DOE interprets the comments supporting a change in the motor-based capacity scope threshold to also be implicitly supporting a corresponding adjustment to either the flow- or pressure-based capacity limits.

In the January 2017 Final Rule, DOE stated that the representations, sampling, and enforcement provisions required by the test procedure may cause significant burden for compressors greater than 200 hp, as many of the larger horsepower models are custom or infrequently built and typically not available for testing. 82 FR 1052, 1061. Additionally, DOE stated that the proposed inclusion of larger (greater than 200 hp) rotary compressors could create a competitive disadvantage for manufacturers of these compressors, as centrifugal, reciprocating, and scroll compressors of the same horsepower do not have the same testing and representation requirements. 82 FR 1052, 1061–1062. DOE concluded that this competitive advantage could incentivize users to switch from a regulated (rotary) to an unregulated (centrifugal and reciprocating) compressor, thus creating an unfair and undue burden on certain manufacturers. 82 FR 1052, 1062. Finally, DOE concluded that the burden of testing certain larger compressors outweighs the benefits. 82 FR 1052, 1062.

DOE has tentatively determined that the same burden concerns as discussed in the January 2017 Final Rule would continue to exist for the current compressor market. Therefore, DOE is not proposing any changes to the current horsepower range of 10 to 200 hp for the existing test procedure.

DOE seeks comment regarding its initial determination to not include compressors with a horsepower rating above 200 hp within the scope of test procedure applicability.

See section V.E for a list of issues on which DOE seeks comment.

4. Lubricant-Free Compressors

As stated in section III.A of this document, the current test procedure for compressors applies to lubricated compressors (and therefore does not apply to lubricant-free compressors). 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding lubricant-free compressors.

ASAP, ACEEE, NRDC, and NYSERDA encouraged DOE to consider expanding the scope of the test procedure to include lubricant-free compressors, citing that these compressors represent a significant portion of the market. (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 1–2)

At this time, DOE is not proposing to expand the scope of the test procedure to include lubricant-free compressors. DOE discussed lubricant-free compressors in both the January 2017 Final Rule (82 FR 1052 at 1063) and the January 2020 ECS Final Rule (85 FR 1504 at 1519–1520), concluding that justification did not exist at the time to support extending the scope of either test procedures or energy conservation standards to apply to lubricant-free compressors. DOE has tentatively determined that the conclusion made in

the 2017 and 2020 final rules still applies for lubricant-free compressors. DOE may evaluate the justification for developing test procedures for lubricant-free compressors as part of a future rulemaking process.

DOE seeks comment regarding its proposal to not include lubricant-free compressors within the scope of test procedure applicability.

See section V.E for a list of issues on which DOE seeks comment.

5. Compressors With Brushed Motors

As stated in section III.A, the current test procedure for compressors applies only to compressors with brushless motors. 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding compressors with brushed motors.

ASAP, ACEEE, NRDC, and NYSERDA encourage DOE to consider expanding the scope of the test procedure to include compressors with brushed motors, citing that these compressors represent a significant portion of the market (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 1–2).

At this time, DOE is not proposing to expand the scope of the test procedure to include compressors with brushed motors. DOE discussed compressors with brushed motors in both the January 2017 Final Rule (82 FR 1052 at 1060) and the January 2020 ECS Final Rule (85 FR 1504 at 1515), concluding that justification did not exist at the time to support extending the scope of either test procedures or energy conservation standards to apply to compressors with brushed motors. DOE has tentatively determined that the conclusion made in the 2017 and 2020 final rules still applies for compressors with brushed motors. DOE may evaluate the justification for developing test procedures for compressors with brushed motors as part of a future rulemaking process.

DOE seeks comment regarding its proposal to not include compressors with brushed motors within the scope of test procedure applicability.

See section V.E of this document for a list of issues on which DOE seeks comment.

6. Medium-Voltage Compressors

As stated in section III.A, the current test procedure for compressors does not restrict applicability by electrical input power voltage. 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding medium-voltage compressors.

The CA IOU's encouraged DOE to evaluate the current exemption for medium-voltage compressors based on electrical input power load profiles for air compressors ranging in size from 300 to 600 HP that they present. The CA IOUs stated that, in the context of the comment, ''medium-voltage'' refers to input voltages greater than 1,000 and that the specific data upon which their comment is based contains medium-voltage compressors of input voltage range 2,300–4,160. (CA IOU's, No. 14 at p. 4) They commented that, if medium-voltage compressors were included, their presented electrical input power load distribution would be more uniform. The CA IOUs stated that, if medium-voltage compressors were rated, load-unload behavior would be significant for understanding the product operation in some specific installations, while full-load would be suitable for others. (CA IOU's, No. 14 at p. 5) The CA IOU's encouraged DOE to evaluate expanding the scope of the test procedure to cover rotary lubricated models up to 500 HP, and to evaluate their suitability when incorporated into the uniform test method. The CA IOUs presented a table illustrating that the compressors of motor power in the range of 201–500 HP account for 25 percent of total air compressor energy consumption (CA IOU's, No. 14 at p. 6–7).

The current test procedure scope of applicability is not limited by voltage. 10 CFR 431.344. DOE recognizes the potential correlation between motor input voltage and motor output power, and may consider the two factors jointly if weighing the consequences of expanding the scope of test procedure applicability by compressors nominal motor horsepower.

See section V.E of this document for a list of issues on which DOE seeks comment.

7. Compressors With Output Pressure Less Than 75 psig

As stated in section III.A, the current test procedure for compressors applies only to rotary compressors, a category which excludes all varieties of dynamic compressors, of which centrifugal compressors are a member. 10 CFR 431.344. In response to the May 2022 RFI, DOE received comments regarding centrifugal blowers and equipment of output pressure of less than 75 psig, which would generally include what are commonly referred to as centrifugal blowers.

The CA IOU's encouraged DOE to develop test procedures for centrifugal blowers and positive-displacement equipment, and to consider air applications for pressures under 75 psig (CA IOU's, No. 14 at p. 8).

At this time, DOE is not proposing to expand the scope of the test procedure to include compressors with output pressure of less than 75 psig. DOE discussed compressors with output pressure of less than 75 psig in both the January 2017 Final Rule (82 FR 1052 at 1062–1063) and the January 2020 ECS Final Rule (85 FR 1504 at 1519), concluding that justification did not exist at the time to support extending the scope of either test procedures or energy conservation standards to apply to compressors with output pressure of less than 75 psig. DOE has tentatively determined that the conclusion made in the 2017 and 2020 final rules still applies for compressors with output pressure of less than 75 psig. DOE may evaluate the justification for developing test procedures for compressors with output pressure of less than 75 psig as part of a future rulemaking process.

DOE seeks comment regarding its proposal to not include equipment for compressed air applications for pressures under 75 psig within the scope of test procedure applicability.

See section V.E of this document for a list of issues on which DOE seeks comment.

B. Industry Standards

1. ISO 1217 as the Basis for This Test Procedure

DOE's current test procedure incorporates by reference certain sections of ISO 1217:2009 for test methods and acceptance tests regarding volume rate of flow and power requirements of displacement compressors, in addition to the operating and testing conditions which apply when a full performance test is specified.

DOE received comments supporting the continued use of ISO 1217 as the basis for the DOE air compressor test procedure. CAGI, supported by Kaeser Compressors, commented that they support maintaining ISO 1217 as the basis for the compressor test procedure, since this standard has been used by industry for decades and is a proven means of accurately measuring positive displacement compressor performance. (CAGI, No. 11 at p. 3; Kaeser Compressors, No. 17 at p. 1) Similarly, Ingersoll Rand commented that they are satisfied with continuing to use ISO 1217:2009 and ISO 1217 Amendment 1:2016 as the basis of the compressors test procedure. They stated that there is no current work to revise ISO 1217 and it remains current as the adopted national standard in the United States. (Ingersoll Rand, No. 13 at p. 2)

DOE tentatively agrees with the comments received and is not proposing any amendments to the existing reference to ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure.

DOE seeks comment regarding its initial determination to continue to use ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure.

See section V.E for a list of issues on which DOE seeks comment.

2. Ambient Temperature Range Requirement

DOE adopted the ambient temperature range for testing of 68 to 90 °F in the January 2017 Final Rule partially in response to concern that creating a climate-controlled space for testing compressors could be a significant burden on small businesses. DOE stated that this temperature range provides representative measurements without unduly burdening manufacturers. 82 FR 1052, 1079, 1080. DOE received a comment about re-defining the range of ambient temperatures for measured isentropic efficiency values. The People's Republic of China commented that ISO 1217:2009 does not specify a specific ambient temperature range for testing, but only the ambient temperature tolerance (±2K). The People's Republic of China stated that the wide range of ambient temperature specified by the standard inevitably leads to a wider range of fluctuations in test results. The People's Republic of China proposed that DOE re-define the range of tolerances for measured energy efficiency values to avoid obstacles to trade. (People's Republic of China, No. 8 at p. 3)

The energy efficiency metric for compressors, package isentropic efficiency, expresses tested compressor power consumption as a ratio and relative to that of an ideal isentropic compression at a given load point. ISO 1217:2009/Amd.1:2016(E) includes a derivation of an expression for isentropic power, which is incorporated by reference at 10 CFR 431.343(b)(2). The resulting expression, labeled (H.6) is a function of inlet pressure, discharge pressure, and volume flow rate, but not inlet temperature, indicating invariance. This invariance alone does not establish that a real compressor under test would be similarly insensitive to temperature. However, it does illustrate that the compression process, itself, does not inherently depend on inlet temperature. Additionally, ISO 1217:2009, which is the industry accepted test method, does not specify a required ambient temperature range for testing.

DOE received comments related to inlet (or ambient) temperature in the January 2017 Final Rule, which are discussed therein. 82 FR 1052, 1080. In that discussion, DOE notes that no commenters provided data characterizing the effect of inlet temperature on measured compressor performance. Similarly, the People's Republic of China has not provided such data. DOE has not obtained such data from other sources. As a result, DOE is not able to evaluate the magnitude of the effect of inlet temperature on measured compressor performance and weigh the potential challenges of narrowing the permitted temperature range against the corresponding improvement in test procedure repeatability. Consequently, DOE is not proposing to amend the current ambient temperature range requirement of 68 to 90 °F for testing air compressors in this NOPR.

DOE seeks comment regarding its proposal to maintain the current ambient temperature range requirement of 68–90 °F for testing air compressors.

DOE seeks comment regarding its proposal to continue to use the tolerances for measured energy efficiency values specified in ISO 1217:2009(E).

See section V.E for a list of issues on which DOE seeks comment.

C. Definitions

1. General

DOE defines terms in 10 CFR 431.342 that identify and describe various varieties of compressors and their components, various values that would be measured when conducting the test procedure, and general compressor terminology.

In response to the May 2022 RFI, DOE received multiple comments supporting the current definitions. CAGI, supported by Kaeser Compressors, commented in support of keeping the current definitions as they are, saying that they sufficiently identify the scope equipment and need no further clarification. (CAGI, No. 11 at p. 2; Kaeser Compressors, No. 17 at p. 1) Ingersoll Rand commented that the current definitions related to the scope of the test procedure are sufficient and do not need to be changed. (Ingersoll Rand, No. 13 at p. 1)

DOE has initially determined that the existing definitions in 10 CFR 431.342 are appropriate for applying the test procedure for air compressors and is not proposing to amend the existing definitions, except for the definition of ''air compressor'' as discussed in the following section.

2. Multi-Element Air Compressors

Air compressors may include multiple compression elements to increase compression efficiency or to generate a greater pressure increase than would be possible with a single compression element. The current definition of ''air compressor'' specifies inclusion of a compression element, but does not exclude air compressors that include more than one compression element.

DOE discussed the current definition of ''air compressor'' as applying to multi-element air compressors in both the January 2017 Final Rule (82 FR 1052, 1068) and in the January 2020 ECS Final Rule, in which multi-staging was identified as a technology option for improving the energy efficiency of compressors. 85 FR 1504, 1537.

In response to the May 2022 RFI, DOE received one comment recommending changes to the definition of ''air compressor.'' Specifically, the People's Republic of China recommended revising the definition of ''air compressor'' to a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment. (People's Republic of China, No. 8 at p. 3). In other words, the People's Republic of China recommends making explicit that compressors with more than one compression element would meet the definition of ''air compressor''.

DOE tentatively concurs with the People's Republic of China that revising the definition of ''air compressor'' to explicitly include air compressors with more than one compression element would reduce the probability that the definition is misinterpreted to exclude air compressors with more than one compression element. The current formulation of the definition of air compressor does not exclude air compressors with more than one compression element; nonetheless, stating expressly that multi-element compressors meet the definition of ''air compressor'' limits the potential for misinterpretation. Accordingly, DOE proposes to amend the definition of ''air compressor'' such that ''compression element (bare compressor)'' is replaced by ''one or more compression elements (bare compressors).''

DOE additionally identified a typographical error in the definition of ''air compressor.'' Specifically, the

current definition of ''air compressor'' includes ''compressor element'' where it should instead have referred to ''compression element.'' This can be logically inferred by examining other uses of ''compression element'' in the regulations. For example, the term ''rotor'', which is a particular variety of compression element, is defined at 10 CFR 431.342 as a compression element that rotates continually in a single direction about a single shaft or axis.

Accordingly, to correct a typographical error in the definition of ''air compressor,'' DOE proposes to substitute ''compression element'' for ''compressor element'' therein.

The complete definition of ''air compressor'' as proposed in this NOPR is ''a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.

DOE seeks comment regarding its proposed amendment of the definition of ''air compressor.''

See section V.E of this document for a list of issues on which DOE seeks comment.

3. Air Compressor Package

A compressor package may include a variety of components which provide differing functions as required by a specific application. In response to the May 2022 RFI, Compressed Air Systems commented that the elements of an air compressor package are not defined, leaving the test procedure unusable. In addition, Compressed Air Systems stated that there is no measure to gauge the differences between different air compressor package designs, and there is confusion on how DOE will measure package efficiency with components aside from the compressor pump and electric motor. (Compressed Air Systems, No. 10 at p. 2, 4) Compressed Air Systems also commented that it is not clear how the test procedure would factor in different drivers that can be used to compress air, as well as what types of drivers are included in the scope of the test procedure NOPR (Compressed Air Systems, No. 10 at p. 2, 3). Compressed Air Systems states that the test procedure is unusable because elements of an air compressor package are not defined. Conversely, Ingersoll Rand, and CAGI, supported by Kaeser Compressors all stated that the existing definitions language is sufficiently clear, as discussed in section III.C.1 of this document.

In response to Compressed Air Systems' statement, Table 1 and Table 2 of appendix A to subpart T of part 431 respectively list equipment required during test (in any case) and equipment required during test if the equipment is distributed in commerce with the basic model. The elements of each list are components of an air compressor package, which DOE assumes to be sufficiently clear absent specific description of an ambiguity. Accordingly, DOE is not proposing a definition of ''air compressor package'' in this NOPR.

With regards to Compressed Air System's concerns about there being confusion on how DOE will measure package efficiency with components aside from the compressor pump and the electric motor, DOE's metric is package isentropic efficiency, which characterizes the ratio of the ideal isentropic power required for compression to the actual packaged compressor power input used for the same compression process. Table 1 of appendix A to subpart T of part 431 lists the equipment that must be present and installed for all tests. Similarly, Table 2 of appendix A to subpart T of part 431, lists equipment required during testing if distributed in commerce with the basic model. DOE has initially concluded that these metrics continue to provide a representative measurement of the energy performance of a rated compressor under an average cycle of use.

Finally, regarding the Compressed Air Systems comment pertaining to different drivers that can be used to compress air, DOE has considered different drivers for air compressors, such as engine-driven compressors, and has concluded that they would be more appropriately addressed as part of a separate rulemaking specifically considering such equipment. As a result, DOE is not proposing to update the scope of this compressors test procedure NOPR to include different types of drivers for air compressors. Only compressors driven by brushless electric motors, as stated in the scope of applicability of the current test procedure, will be subject to the air compressors test procedure.

DOE seeks comment regarding its initial determination to continue to limit the scope of applicability of this test procedure to compressors driven by brushless electric motors.

See section V.E of this document for a list of issues on which DOE seeks comment.

D. Test Method

1. K6 Correction Factor

The K_6 correction factor in ISO 1217:2009 is the correction factor for the isentropic exponent (ratio of specific heats) of air (see section 4.1 of ISO 1217:2009). DOE received comments about potentially needing to use the K_6 correction factor in certain situations. CAGI, supported by Kaeser Compressors, commented that if testing is conducted at sites significantly above sea level, DOE may need to use a K_6 correction factor that was omitted from the test procedure to obtain accurate results. They also commented that the measurements taken as a result of the DOE test procedure, and ISO 1217, are the most accurate data that can be obtained practically, as the use of onsite flowmeters or similar equipment without standardized methodologies does not provide a consistent, accurate means of determining performance or energy use. (CAGI, No. 11 at p. 2; Kaeser Compressors, No. 17 at p. 1).

DOE deliberately omitted the K_6 correction factor during the January 2017 Final Rule. As listed in the footnotes of the January 2017 Final Rule, the isentropic exponent of air has some limited variability with atmospheric conditions, and DOE adopted a fixed value of 1.400 to align with the EU Lot 31 draft standard's metric calculations.[5] 82 FR 1052, 1084. As such, DOE is not proposing to amend the current fixed value of 1.400 for isentropic exponent in this test procedure NOPR.

DOE seeks comment regarding its initial determination to continue to use a fixed value of 1.400 for the isentropic exponent, as opposed to incorporating a K_6 correction factor.

See section V.E of this document for a list of issues on which DOE seeks comment.

2. Correction of Pressure Ratio at Full-Load Operating Pressure Formula

Section II.F of appendix A to subpart T of part 431 specifies a formula for pressure ratio at full-load operating pressure. The formula for pressure ratio at full-load operating pressure is used to classify whether a machine or apparatus qualifies as a compressor, as the definition of ''compressor'' stated in 10 CFR 431.342 states that the machine or apparatus must have a pressure ratio at full-load operating pressure greater than 1.3. Pressure ratio at full-load operating pressure does not factor directly into the

[5] The referenced draft standard was published to the January 2020 ECS Final Rule's rulemaking docket and is available at: *www.regulations.gov/document/EERE-2013-BT-STD-0040-0031.*

measured values of compressor performance. CAGI, supported by Kaeser Compressors, commented that there is an apparent error in the formula for pressure ratio. (CAGI, No. 11 at p. 2, 4; Kaeser Compressors, No. 17 at p. 1).

DOE concurs with the commenters that the current formula is an error, as it both does not match the discussion in the preamble of the January 2017 Final Rule and does not contain terms related to the calculation of pressure ratio at full-load operating pressure.

The current formula for pressure ratio at full-load operating pressure inadvertently duplicates a formula used in a calculation related to determining a represented value of performance for a compressor basic model from a tested sample of units. Specifically, the current formula of pressure ratio at full-load operating pressure exactly matches the formula for the lower 95 percent confidence limit (LCL) of the true test mean divided by 0.95.

As a result, in this test procedure NOPR, DOE is proposing to change the formula for pressure ratio at full-load operating pressure in section II.F of appendix A to subpart T of part 431 to rectify this error and reflect the proper pressure ratio at full-load operating pressure equation that will be utilized in the test procedure.

Because the erroneous text did not include the accompanying variables (PR, P_1 and P_{FL}), it is unlikely that it would have been misinterpreted as the formula for pressure ratio at full-load operating pressure during the testing of compressors. In the January 2017 Final Rule, DOE adopted this revised method for measuring pressure ratio at full-load operating pressure to remove dependence on atmospheric pressure. This method uses a standard atmospheric pressure, 100 kPa, and uses the full-load operating pressure declared for the compressor. As a result, this method creates results that are independent of the atmospheric pressure at which testing is performed. 82 FR 1085. The correct calculation for pressure ratio at full-load operating pressure is shown below in equation 1:

$$PR = \frac{P_{FL}}{P_1} \qquad \text{Eq. 1}$$

Where:

PR = pressure ratio at full-load operating pressure;

P_1 = 100 kPa; and

P_{FL} = full-load operating pressure, determined in section III.C.4 of appendix A to subpart T of part 431 (Pa gauge).

This change is proposed exclusively to fix a typographical error and has no effect on the scope of compressors subject to the test procedure, or the calculated values of isentropic efficiency.

DOE seeks comment regarding its proposal to correct the equation for pressure ratio at full-load operating pressure to amend a previous typographical error.

See section V.E of this document for a list of issues on which DOE seeks comment.

E. Representations of Energy Efficiency or Energy Use

DOE received a number of comments regarding the representative average use cycle applied in the current air compressor test procedure. Compressed Air Systems commented saying that the current test procedure does not represent the average use cycle of an air compressor, and the results of the test procedure are not reflective of the actual industry application of air compressors. (Compressed Air Systems, No. 10 at p. 1, 3–4) It elaborated that the DOE test procedure results obtained from average use are inconsistent with the reality of air compressor usage, because all air compressors do not run at 100 percent duty cycle. In addition, Compressed Air Systems commented that the usage of fixed speed and variable speed compressors is impossible to determine. For variable speed compressors, Compressed Air Systems stated that the compressor may meet the DOE energy conservation standards when tested at 100 percent load but yield a much different result when tested reduced output. (Compressed Air Systems, No. 10 at p. 4) The CA IOU's recommended that DOE alter the current 100 percent duty testing cycle to an intermittent duty cycle that more accurately represents how certain air compressors are used. (CA IOU's, No. 14 at p. 7–8) ASAP, ACEEE, NRDC, and NYSERDA also encouraged DOE to explore testing air compressors at the fully unloaded state as well as fully loaded, since this would be more representative of typical usage. (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 3)

DOE also received comments in support of keeping the existing test procedure requirements. CAGI, supported by Kaeser Compressors, commented in support of maintaining the current requirements, as there is no single average use cycle that could simulate all of the varied compressor applications and industries. (CAGI, No. 11 at p. 3; Kaeser Compressors, No. 17 at p. 1) Ingersoll Rand commented saying that it is impossible to accurately represent typical energy use in service with a single usage pattern. Ingersoll Rand stated that ISO 1217 Annex C/E provides a valid, practical, and repeatable approach in steady state conditions, and defining steady state conditions with metrics is the only way to accomplish this. Ingersoll Rand commented that although the current metric does not mimic a particular operating cycle, it does provide a consistent and repeatable method that can be used by manufacturers and regulators. Ingersoll Rand supported the current test procedure, establishing energy efficiency testing requirements for fixed speed machines at full-load operating pressure and full-load volume flow rate, and variable-speed machines using a blended metric of efficiencies determined at 40, 70, and 100 percent of full-load volume flow rate and full-load operating pressure. (Ingersoll Rand, No. 13 at p. 2)

As commenters have noted, operating patterns in service vary considerably, by not only application and industry but also by site, by unit, and over time. But that is the case for many products and equipment covered by DOE's energy conservation standards. And DOE is not tasked with creating test procedures that measure energy efficiency for every possible application or pattern of use. Instead, DOE is tasked with developing a test procedure that is, among other things, reasonably designed to produce test results which reflect energy efficiency or use during a representative average use cycle. (42 U.S.C. 6314(a)(2)) To that end, the current energy efficiency metric for compressors is designed to be representative of compressor operating patterns at-large. The CA IOUs' comment includes reference to load factor data measured from in-service compressors, which the CA IOUs state suitably aligns with the current metric for variable-speed compressors (CA IOU's, No. 14 at p. 2)

Analogous data for fixed-speed compressors depicts most operation close to 100 percent of full-output, which corresponds to DOE's test metric for fixed-speed compressors. (CA IOU's, No. 14 at p. 3) The CA IOUs observe that the fixed-speed load factor distribution is bimodal with a second, smaller peak occurring at 40 percent of full-load, and note that this may correspond to unloaded (*i.e.,* supplying no compressed air to the application). Because the fixed-speed load factor shows operation close to 100 percent of full output as the most common usage, DOE has determined that the existing test metric that reflects this operation, rather than 40 percent of full load, is appropriate.

Additionally, the CA IOUs comment cites an estimate by Natural Resources Canada that unloaded operation consumes approximately 15–35 percent of full-load operating power. (CA IOU's, No. 14 at p. 3) Integrating that estimate with the observed apparent unloaded peak value of 40 percent cited by the CA IOUs produces an estimate of aggregate unloaded energy consumption fraction of 6–14 percent, a minority of the total and, thus, correspondingly less representative of fixed-speed compressor operation than the current requirement to test fixed-speed compressors at full load.

By contrast and as stated, comments by CAGI supported by Kaeser Compressors, and Ingersoll Rand express skepticism of the potential to improve the representativeness of the current metrics in view of the diversity of compressor operating patterns and support retaining the current metrics unmodified. (CAGI, No. 11 at p. 3; Kaeser Compressors, No. 17 at p. 1; Ingersoll Rand, No. 13 at p. 2)

Based on available data, DOE has initially determined that modifying either the variable- or fixed-speed metrics would not significantly improve representativeness as compared to the existing metric. Accordingly, DOE is not proposing to alter the current metric for compressors.

Regarding the CA IOU's suggestion of altering the current 100 percent duty testing cycle to an intermittent duty cycle, DOE reiterates the two different package isentropic efficiency metrics depending on equipment configuration: (1) Full-load package isentropic efficiency for certain fixed-speed compressors, and (2) part-load package isentropic efficiency for certain variable-speed compressors. In this NOPR, DOE tentatively concludes that these metrics provide a representative measurement of the energy performance of the rated compressor under an average cycle of use, as required by EPCA, and accurately represent how fixed-speed and variable-speed air compressors are used when considering the practicality and repeatability of the requirements of the test procedure. (42 U.S.C. 6314(a)(2)) As a result, DOE is not proposing to alter the current duty testing cycle to an intermittent duty cycle in this test procedure NOPR.

Regarding ASAP, ACEEE, NRDC, and NYSERDA's recommendation of testing at the fully-unloaded state, while DOE agrees that information describing unloaded states of operation could be useful to the end user, their recommendation represents testing and reporting that is not essential to the output of the test procedure. Requiring such testing and reporting would represent an incremental burden beyond what DOE is proposing in this test procedure NOPR. To minimize undue incremental burden of this test procedure NOPR, as required by EPCA, DOE is not proposing mandatory testing or reporting of no-load power at this time. (42 U.S.C. 6314(a)(2))

DOE also received comments regarding the current test procedure requirements and the accuracy of their resultant measurements. Compressed Air Systems commented asking how DOE will provide accurate load data to establish a proper baseline. (Compressed Air Systems, No. 10 at p. 6) Alternatively, CAGI, supported by Kaeser Compressors, commented in support of the current test procedure requirements, saying that the test procedure accurately measures energy use, and that the measurements taken as a result of these requirements are the most accurate data that can be obtained practically. (CAGI, No. 11 at p. 2; Kaeser Compressors, No. 17 at p. 1) Similarly, Ingersoll Rand commented that the current test methods in the test procedure are the industry standard to produce accurate measurements of energy use and efficiency, and that they support the current test procedure requirements and recommend that they be reaffirmed. (Ingersoll Rand, No. 13 at p. 2)

The existing DOE test procedure is intended to produce results equivalent to those produced historically under ISO 1217:2009(E), as amended. For any future energy conservation standards rulemaking, DOE would consider the results of this test procedure, as amended through this rulemaking, to establish a proper baseline. Given the other industry support for the current test procedure requirements, DOE is not proposing to amend the general test procedure requirements in this NOPR, except for the specific proposed amendments as discussed.

Additionally, DOE received comments regarding the loading states at which compressors should be tested. ASAP, ACEEE, NRDC, and NYSERDA jointly commented encouraging DOE to consider requiring fixed speed compressors with variable air flow controls to be tested at part-load. They stated that this would make it easier to compare part-load efficiency between fixed and variable speed compressors and would allow buyers to have more data to select the best compressor for their application. (ASAP, ACEEE, NRDC, and NYSERDA, No. 12 at p. 3)

To assess a part-load package isentropic efficiency metric for fixed-speed variable airflow compressors, DOE reviewed the scope and applicability of relevant, comparable testing and rating programs, namely, the CAGI Performance Verification Program and the EU Lot 31 draft standard for compressors.[5] The CAGI Performance Verification Program separates rotary compressors into only two groupings: (1) ''rotary compressors,'' and (2) ''rotary variable frequency drive compressors.'' The former rates compressors at only full-load operating pressure, while the latter allows for multiple ratings at reduced flows. However, as indicated by the name of the latter grouping, it encompasses only compressors driven by variable-frequency drives. Consequently, fixed-speed variable airflow compressors are considered ''rotary compressors'' by the CAGI Performance Verification Program and are rated at only full-load operating pressure. Similar to the CAGI program, the EU Lot 31 draft standard considers a fixed-speed variable airflow compressor to be a fixed-speed rotary standard air compressor, which is rated at only full-load operating pressure. Considering the precedent established by CAGI and the EU, the lack of a verified test method, and the lack of verified historical performance data, DOE concludes that it is not warranted to establish part-load package isentropic efficiency as the rating metric for non-speed-varying variable airflow compressors at this time. Consequently, in this NOPR, DOE tentatively reaffirms that full-load package isentropic efficiency applies to fixed-speed compressors, and part-load package isentropic efficiency applies to variable-speed compressors.

Finally, DOE received a comment regarding the number of test points for variable frequency drive (VFD)-equipped air compressors. In their comment, the CA IOU's provided a load distribution for in-scope VFD-controlled air compressor equipment, showing that it is generally lower in load factor

relative to out-of-scope VFD-controlled compressors, and stated that VFD-equipped air compressors would benefit from additional load points (CA IOU's, No. 14 at p. 2). The CA IOU's also recommended that DOE consider including overload test points since loads above a 1.0 load factor are observed in the dataset. (CA IOU's, No. 14 at p. 3–4) The CA IOUs also state that the current test procedure's measurement points are sufficiently representative for in-scope compressors.

DOE concurs with the CA IOUs characterization of the current test points as being sufficiently representative for in-scope compressors. As discussed in section III.A, DOE is proposing not to expand the scope of the compressors test procedure in this NOPR. Accordingly, adding load points for variable-speed compressors would increase testing burden without significantly improving the representativeness of the test procedure. As such, DOE is not proposing to revise the required test load points for variable-speed compressors in this NOPR. (42 U.S.C. 6314(a)(2))

DOE seeks comment regarding its proposal to maintain the number of test points for VFD-equipped air compressors, and to not include overload test points above a 1.0 load factor.

See section V.E of this document for a list of issues on which DOE seeks comment.

1. Operating Costs

Compressed Air Systems commented that compressor operating costs and associated emissions were incorrectly calculated due to having been based on a 100% duty cycle, or a compressor that operates continuously at maximum output until the end of its life. (Compressed Air Systems, No. 10 at p. 4) Compressed Air Systems states that this is not an accurate representation of actual compressor operating patterns.

DOE concurs with Compressed Air System that compressors vary widely in operating patterns and duty cycle. However, that the test procedure measures performance of fixed-speed compressors at full-load does not require a corresponding assumption in the analysis supporting DOE's January 2020 ECS Final Rule that compressors may only ever be operated that way. Table IV.15 of the January 2020 ECS Final Rule presents average annual hours of operating as a function of compressor capacity, which range from a minimum of 3,385 (for the lowest-capacity compressors) to a maximum of 4,248 (for the highest-capacity compressors). 85 FR 1504, 1550. Those figures equate to respective annualized duty cycles of 39 percent and 48 percent, and are used as inputs into subsequent operating cost calculations used in the analysis of the January 2020 ECS Final Rule. Accordingly, DOE is proposing not to revise the requirement to measure the performance of fixed-speed compressors at full load, or more specifically, full-load actual volume flow rate at full-load operating pressure, as described in paragraph C.1 of appendix A to subpart T of part 431.

DOE seeks comment regarding if the test procedure reflects actual operating costs for compressors based on their realistic average use cycles.

See section V.E of this document for a list of issues on which DOE seeks comment.

F. Reporting

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For compressors, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.63. As discussed in the previous paragraphs, DOE is not proposing to amend the product-specific certification requirements for these products.

DOE received a comment regarding the availability of compressor rating data. The CA IOU's commented encouraging DOE to ensure that unloaded air compressor rating data is loaded into the DOE Compliance Certification Management System database so that the data is accessible to end users. (CA IOU's, No. 14 at p. 3–4) As discussed in section III.E of this NOPR, DOE is not proposing any mandatory testing of no-load power. Accordingly, DOE is not proposing to require reporting of such metrics. Manufacturers may choose to voluntarily measure and provide no-load power as part of their model literature.

G. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The following sections discuss DOE's evaluation of estimated costs associated with the proposed amendments.

DOE received comments regarding the overall financial impact of this test procedure NOPR on domestic manufacturers. Compressed Air Systems commented wondering how DOE will remove the significant effects that will place an undue burden on small domestic manufacturers, and how DOE will protect small manufacturers from substantial financial impacts due to this test procedure. (Compressed Air Systems, No. 10 at p. 3) Also, Compressed Air Systems stated that the current testing method has provided a competitive advantage to large U.S. companies, as well as foreign air compressor manufacturers, and has placed an undue burden on small U.S. air compressor manufacturers. (Compressed Air Systems, No. 10 at p. 4) Compressed Air Systems also stated that there is only 1 lab in the United States that can perform the DOE test method, and it would take 155 days to test and provide the results, noting that the test procedure is unduly burdensome. (Compressed Air Systems, No. 10 at p. 4)

Though not addressing burden per se, CAGI noted in its comment that the ISO 1217 standard has been used within the compressor industry for decades, predating the January 2017 Final Rule, and is a proven means of accurately measuring positive-displacement compressor performance. (CAGI, No. 11 at p. 3)

That ISO 1217 was widely used by industry prior to incorporation by reference by DOE as part of its own test procedure rulemaking calls into question the difficulty of implementing it, since the industry can be presumed unlikely to create and voluntarily use a procedure that was unduly burdensome. Although Compressed Air Systems states that only a single laboratory is capable of conducting the DOE test procedure, it is unclear whether that reflects inherent difficulty in conducting it or a relative absence of demand for third-party testing. Also, Compressed Air Systems does not address whether any manufacturers, themselves, are capable of testing compressors.

In this NOPR, DOE proposes to: (1) update the formula for pressure ratio at full-load operating pressure currently presented in 10 CFR part 431, subpart T to rectify a previous error and (2) modify the current definition of ''air compressor'' to clarify that compressors with more than one compression element are still within the scope of this test procedure, and to revise the typographical error of ''compressor element'' to ''compression elements.''

DOE does not anticipate any added test burden from this change, nor does it anticipate any associated costs with this proposed amendment. Additionally, the only thing manufacturers would need to do

differently based on this proposed change is use the corrected formula for the determination of pressure ratio at full-load operating pressure, which will be updated and provided by DOE in appendix A to subpart T of part 431.

DOE has initially determined that this proposed amendment would not impact the representations of energy efficiency/energy use for compressors. Based on the initial determination manufacturers would be able to rely on data generated under the current test procedure should the proposed amendments be finalized. As a result, retesting of compressors would not be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

DOE has concluded that the test procedure and associated representation requirements established in this test procedure NOPR are not unduly burdensome, as: (1) the test method follows accepted industry practice, and (2) no models would need to be retested in order to continue to make representations. DOE notes that impact to each manufacturer will be different, and manufacturers may petition DOE for an extension of the 180-day representations requirement, for up to an additional 180 days, if manufacturers feel it represents an undue hardship. (42 U.S.C. 6314 (d)(2)) However, as any representations are voluntary prior to the compliance date of any energy conservations standards for compressors, there is no direct burden associated with any of the testing requirements established in this NOPR.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

The test procedure for compressors at appendix A to subpart T of part 431 is based on, and incorporates by reference, much of ISO Standard 1217:2009(E), (ISO 1217:2009(E)), ''Displacement compressors—Acceptance tests,'' as amended through Amendment 1:2016. DOE does not propose to incorporate any new industry standards by reference via amendment in this NOPR. The industry standards DOE has incorporated by reference for the test procedure for compressors are located in 10 CFR 431.343.

DOE requests comments on the benefits and burdens of the proposed updates to the test procedure for compressors.

H. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1).

If DOE were to publish an amended test procedure EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2). To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

For manufacturers of compressors, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be

subject to the requirements of the rule. 13 CFR part 121. The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-tablesize-standards.* Compressor manufacturing is classified under NAICS 333912, ''air and gas compressor manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business in this category. This employment figure is enterprise-wide, encompassing employees at all parent, subsidiary, and sister corporations.

To identify and estimate the number of small business manufacturers of equipment within the scope of this proposed rulemaking, DOE conducted a market survey using available public information. DOE's research involved industry trade association membership directories (including CAGI), individual company and online retailer websites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture equipment covered by this rulemaking. DOE additionally reviewed publicly-available data, data available through market research tools, and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer equipment within the scope of this proposed rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified a total of 12 domestic small businesses manufacturing compressors. However, as previously stated, the amendments proposed in this NOPR revise certain definitions and formulas to ensure the clarity and accuracy of existing requirements and procedures. DOE has determined that the proposed test procedure amendments would not impact testing costs otherwise experienced by manufacturers.

Therefore, DOE initially concludes that the impacts of the proposed test procedure amendments would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of compressors must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedure, including any amendments adopted for the test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including compressors. (*See* generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The amendments adopted in this final rule do not impact the certification and reporting requirements for compressors.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for compressors. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting a test procedure for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to

determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of compressors is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for compressors would incorporate testing methods contained in certain sections of the following commercial standards: ISO 1217:2009(E), as amended through ISO 1217:2009(E)/Amd.1:2016. While this test procedure is not exclusively based on this industry testing standard, some components of the DOE test procedure adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) In the January 2017 Final Rule, DOE consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and received no comments objecting to their use. 82 FR 1099.

M. Description of Materials Incorporated by Reference

The following standards were previously approved for incorporation

by reference in subpart T, appendix A, and no change is being proposed:

1. ISO 1217:2009(E), ''Displacement compressors—Acceptance tests,'' July 1, 2009, sections 2, 3, and 4; sections 5.2, 5.3, 5.4, 5.6, 5.9; paragraphs 6.2(g), and 6.2(h) including Table 1; Annex C (excluding C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5).

2. ISO 1217:2009/Amd.1:2016(E), Displacement compressors—Acceptance tests (Fourth edition); Amendment 1: ''Calculation of isentropic efficiency and relationship with specific energy,'' April 15, 2016, sections 3.5.1 and 3.6.1; sections H.2 and H.3 of Annex H.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=6&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rule, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this proposed rule. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule.[6] Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI''). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

[6] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment regarding its proposal to not include reciprocating compressors within the scope of test procedure applicability.

(2) DOE seeks comment regarding its proposal not to include centrifugal compressors within the scope of test procedure applicability.

(3) DOE seeks comment regarding whether other dynamic compressor varieties than centrifugal compete with the air compressor categories discussed in this NOPR.

(4) DOE seeks comment regarding its initial determination to not include compressors with a horsepower rating above 200 hp within the scope of test procedure applicability.

(5) DOE seeks comment regarding its proposal to not include lubricant-free compressors within the scope of test procedure applicability.

(6) DOE seeks comment regarding its proposal to not include compressors with brushed motors within the scope of test procedure applicability.

(7) DOE seeks comment regarding its proposal to not include equipment for compressed air applications for pressures under 75 psig within the scope of test procedure applicability.

(8) DOE seeks comment regarding its initial determination to continue to use ISO 1217:2009(E) as amended through Amendment 1:2016 as the basis for the compressors test procedure.

(9) DOE seeks comment regarding its proposal to maintain the current ambient temperature range requirement of 68–90 °F for testing air compressors.

(10) DOE seeks comment regarding its proposal to continue to use the tolerances for measured energy efficiency values specified in ISO 1217:2009(E).

(11) DOE seeks comment regarding its proposed amendment of the definition of ''air compressor.''

(12) DOE seeks comment regarding its initial determination to continue to limit the scope of applicability of this test procedure to compressors driven by brushless electric motors.

(13) DOE seeks comment regarding its initial determination to continue to use a fixed value of 1.400 for the isentropic exponent, as opposed to incorporating a K6 correction factor.

(14) DOE seeks comment regarding its proposal to correct the equation for pressure ratio at full-load operating pressure to amend a previous typographical error.

(15) DOE seeks comment regarding its proposal to maintain the number of test points for VFD-equipped air compressors, and to not include overload test points above a 1.0 load factor.

(16) DOE seeks comment regarding if the test procedure reflects actual operating costs for compressors based on their realistic average use cycles.

(17) DOE requests comments on the benefits and burdens of the proposed updates to the test procedure for compressors.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on February 2, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 2, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend part 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 431.342 is amended by revising the definition of ''Air compressor'' to read as follows:

§ 431.342 Definitions concerning compressors.

* * * * *

Air compressor means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of one or more compression elements (bare compressors), driver(s), mechanical equipment to drive the compression elements, and any ancillary equipment.

* * * * *

■ 3. Appendix A to subpart T of part 431 is amended by revising section II.F. to read as follows:

Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors

* * * * *

II. * * *

F. Determination of Pressure Ratio at Full-Load Operating Pressure

Pressure ratio at full-load operating pressure, as defined in § 431.342, is calculated using the following equation:

$$PR = \frac{P_{FL}}{P_1}$$

Where:

PR = pressure ratio at full-load operating pressure;

P_1 = 100 kPa; and

P_{FL} = full-load operating pressure, determined in section III.C.4 of this appendix (Pa gauge).

* * * * *

[FR Doc. 2023–02589 Filed 2–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0164; Project Identifier MCAI–2022–01357–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by a report that certain airplane flight manuals (AFMs) contain figures with incorrect performance charts for landing on contaminated runways. This proposed AD would require revising the existing AFM to correct the affected performance charts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 30, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0164; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier, Inc., Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; internet *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0164; Project Identifier MCAI–2022–01357–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your

comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–49, dated August 23, 2022 (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states that it was discovered that the thrust reverser correction factors presented in certain AFM performance charts for landing on contaminated runways do not provide sufficient margin for stopping distances in certain conditions. If not corrected, use of the affected performance charts could lead to longitudinal runway excursions. To address the unsafe condition, Transport Canada issued Transport Canada AD CF–2021–35, dated October 26, 2021 (Transport Canada AD CF–2021–35) mandating certain AFM revisions that incorporate changes to the wet and contaminated runway stopping distance data. Transport Canada AD CF–2021–35 corresponds to FAA AD 2022–24–01, Amendment 39–22241 (88 FR 6976, February 2, 2023) (AD 2022–24–01).

Since Transport Canada AD CF–2021–35 was issued, the MCAI states that it was discovered that the mandated AFM changes to Figures 07–35–2 and 07–35–4 are incorrect in certain later revisions of two of the AFMs.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0164.

Relationship Between This NPRM and AD 2022–24–01

Accomplishing the AFM revision required by paragraph (g) of this proposed AD terminates the requirement in AD 2022–24–01 to incorporate Figure 07–35–2 and Figure 07–35–4 as part of the procedures specified in paragraphs (g)(3)(viii) and (g)(5)(viii) of AD 2022–24–01.

Operators that revise the existing AFM to incorporate Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022; and Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022; meet the applicable requirements of paragraphs (g)(3)(viii) and (g)(5)(viii) of AD 2022–24–01 and the proposed requirements of this AD.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which specifies revised AFM corrections to the performance charts for landing on contaminated runways. These documents are distinct since they apply to different airplane models and configurations.

- Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022. (For obtaining this section of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.)
- Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022. (For obtaining this section of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.)

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing AFM to correct the affected performance charts.

Compliance With AFM Revisions

Transport Canada AD CF–2022–49, dated August 23, 2022, requires operators to ''advise all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flight crew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 204 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$17,340

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–0164; Project Identifier MCAI–2022–01357–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 30, 2023.

(b) Affected ADs

This AD affects AD 2022–24–01, Amendment 39–22241 (88 FR 6976, February 2, 2023) (AD 2022–24–01).

(c) Applicability

This AD applies to Bombardier, Inc., airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model BD–700–1A10 airplanes, serial numbers 9381, 9432 through 9860 inclusive, 9863 through 9867 inclusive, 9869 through 9871 inclusive, 9873, 9875 through 9878 inclusive, 60005, 60024, 60030, 60032, 60037, 60043, 60045, 60049, 60056, 60057, 60061, 60068 and 60072.

(2) Model BD–700–1A11 airplanes, serial numbers 9386, 9401, and 9445 through 9997 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that certain airplane flight manuals (AFMs) contain figures with incorrect performance charts for landing on contaminated runways. The FAA is issuing this AD to address incorrect AFM performance charts, which if not corrected, could lead to longitudinal runway excursions.

(f) Compliance

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

(g) AFM Revision

Within 30 days after the effective date of this AD: Do the applicable actions specified in paragraph (g)(1) and (2) of this AD.

(1) For Model BD–700–1A10 airplanes with a Global 6000 marketing designation: Revise the existing AFM to incorporate the information specified in Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

Note 1 to paragraph (g)(1): For obtaining this section of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(2) For Model BD–700–1A11 airplanes with a Global 5000 featuring Global Vision Flight Deck (GVFD) marketing designation: Revise the existing AFM to incorporate the information specified in Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

Note 2 to paragraph (g)(2): For obtaining this section of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

(h) Terminating Action for Certain Requirements of AD 2022–24–01

Accomplishing the AFM revision required by paragraph (g) of this AD terminates the requirement in AD 2022–24–01 to incorporate Figure 07–35–2 and Figure 07–35–4 as part of the procedures specified in paragraphs (g)(3)(viii) and (g)(5)(viii) of AD 2022–24–01.

(i) Additional FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–49, dated August 23, 2022, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0164.

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

(k) Material Incorporated by Reference

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

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

(i) Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

Note 3 to paragraph (k)(2)(i): For obtaining this section of the Bombardier Global 6000 Airplane Flight Manual—Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(ii) Figure 07–35–2 and Figure 07–35–4 of paragraph A., Take-off on Wet Grooved or Wet PFC Runways, of Section 6—Performance, of Supplement 35—Operation on Wet Grooved or Wet Porous Friction Course Runways, of Chapter 7—Supplements of Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

Note 4 to paragraph (k)(2)(ii): For obtaining this section of the Bombardier Global 5000 Featuring Global Vision Flight Deck Airplane Flight Manual—Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

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

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

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

Issued on February 7, 2023.

Christina Underwood,

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

[FR Doc. 2023–02938 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Hardcopy Postage Statements Discontinued

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to discontinue the use of hardcopy postage statements for domestic commercial mailings.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Hardcopy Postage Statements Discontinued''. Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Michael Filipski at (312) 765–3089 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: Currently, unless manifested using eVS® or mailings entered under the full-service automation program, domestic commercial mailers had the option to submit a completed hardcopy or electronic postage statement for any mailing claiming a discount and all permit imprint mailings.

The Postal Service is proposing to discontinue the use of hardcopy postage statements to improve efficiency by expediting the acceptance of commercial mail. Except for eVS mailings, all domestic commercial mailings must use an approved electronic method to transmit a postage statement to the *PostalOne!* ® system.

The Postal Service provides free means of electronic postage statement submission through the Intelligent Mail® for Small Business (IMsb) tool and Postal Wizard®. There are also approved third party software options available on PostalPro at *postalpro.usps.com.*

The use of hardcopy postage statements for Every Door Direct Mail—Retail® (EDDM–R®) and international mailings will not be affected by this proposed revision.

The Postal Service is proposing to implement this change effective January 21, 2024.

We believe the proposed revisions will provide customers with a more efficient mailing experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

200 Commercial Letters, Flats, and Parcels

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

1.0 Postage Statements

1.1 Completing Postage Statements

[Revise the first sentence of 1.1 to read as follows:]

Unless manifested using eVS under 705.2.9, any domestic mailing claiming a discount and all permit imprint mailings must be accompanied by a completed electronic postage statement. (*Note:* Except for Every Door Direct Mail—Retail, all commercial references to ''postage statements'' in the DMM are electronic.) * * *

* * * * *

[Delete 1.3, Facsimile Postage Statements, in its entirety.]

* * * * *

3.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

3.2 Format and Content

For First-Class Mail, Periodicals, USPS Marketing Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

e. * * * For Periodicals mailings, documentation also must provide:

* * * * *

[Delete the last sentence of item e4.]

* * * * *

230 Commercial Mail First-Class Mail

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Affixing Postage to Presorted and Automation Letters and Flats

2.1 Affixing Postage for Presorted and Automation First-Class Mail

Except as permitted under 2.2 or authorized by the director, Business Acceptance Solutions, each piece must bear the numerical value of postage under one of these conditions:

* * * * *

[Revise the last sentence of item b to read as follows:]

b. * * * Additional postage must be paid at the time of mailing with an advance deposit account.

2.2 Affixing Postage at Less Than Full Price to All Pieces

* * * * *

2.2.1 Lowest Price

A mailer may affix postage evidencing postage at the lowest price as follows:

* * * * *

[Revise the last sentence of item b to read as follows:]

b. Additional postage: * * * The total additional postage must be paid by advance deposit account.

* * * * *

2.2.2 Mixed Price Alternative

[Revise the last sentence of 2.2.2 to read as follows:]

* * * The total additional postage must be paid by advance deposit account.

* * * * *

240 Commercial Mail USPS Marketing Mail

243 Prices and Eligibility

* * * * *

3.3 Additional Basic Standards for USPS Marketing Mail

Each USPS Marketing Mail mailing is subject to these general standards:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A completed postage statement using the correct USPS form must be submitted with each mailing. * * *

* * * * *

244 Postage Payment and Documentation

* * * * *

2.0 Additional Postage Payment Standards

2.1 Identical-Weight Pieces

[Revise the third sentence in 2.1 to read as follows:]

* * * If exact postage is not affixed, all additional postage and surcharges must be paid at the time of mailing with an advance deposit account. * * *

* * * * *

3.0 Affixing Postage at Less Than Full Price

* * * * *

3.2 Lowest Price

A mailer may affix metered postage at the lowest price on identical-weight pieces as follows:

* * * * *

[Revise the last sentence of item c to read as follows:]

c. Additional postage: * * * The total additional postage must be paid by advance deposit account.

* * * * *

3.3 Mixed Price Alternative for Letters and Flats

[Revise the last sentence of 3.3 to read as follows:]

* * * The total additional postage must be paid by advance deposit account.

* * * * *

245 Mail Preparation

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.9 Delivery Sequence Documentation

6.9.1 Basic Standards

[Revise the third sentence of the introductory text of 6.9.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

9.0 Preparing Enhanced Carrier Route Flats

* * * * *

9.10 Delivery Sequence Documentation

9.10.1 Basic Standards

[Revise the third sentence of the introductory text of 9.10.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

12.0 Preparing Enhanced Carrier Route Product Sample Parcels

* * * * *

12.7 Delivery Sequence Documentation

12.7.1 General Standards

[Revise the third sentence of the introductory text of 12.7.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

250 Commercial Mail Parcel Select

* * * * *

254 Postage Payment and Documentation

* * * * *

2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise the first sentence of 2.1 to read as follows:]

All metered and permit imprint mailings of 50 pieces or more, except manifested mail using eVS under 705.2.9, must be accompanied by a completed postage statement. * * *

* * * * *

602 Addressing

* * * * *

5.0 Move Update Standards

* * * * *

5.4 Mailer Certification

[Revise the text of 5.4 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the Move Update standard has been met for the address records, including each address in the corresponding mailing presented to the Postal Service.

* * * * *

6.0 ZIP Code Accuracy Standards

* * * * *

6.3 Mailer Certification

[Revise the text of 6.3 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the ZIP Code accuracy standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

7.0 Carrier Route Accuracy Standard

* * * * *

7.4 Mailer Certification

[Revise the text of 7.4 to read as follows:]

The mailer's electronic confirmation during eDoc submission certifies that the carrier route accuracy standard has been met for each address in the corresponding mailing presented to the USPS.

* * * * *

8.0 Presort Accuracy Validation and Evaluation (PAVE)

8.1 Presort Accuracy Validation and Evaluation (PAVE)

* * * * *

8.1.2 Process

[Revise the second and third sentence of 8.1.2 to read as follows:]

* * * Vendors process the test file(s) through their presort software or hardware and return the resulting presort documentation to the USPS National Customer Support Center (NCSC) for evaluation of the answers. Each test file is evaluated for its accuracy of presort, compliance with current DMM standards, accuracy of sack/tray/pallet tag labels, and general acceptability of presort documentation. * * *

* * * * *

9.0 Coding Accuracy Support System (CASS)

* * * * *

9.3 Date of Address Matching and Coding

9.3.1 Update Standards

[Revise the seventh sentence in the introductory text of 9.3.1 to read as follows:]

* * * The mailer's electronic confirmation during eDoc submission certifies that this standard has been met when the corresponding mail is presented to the USPS. * * *

* * * * *

9.5 Documentation

9.5.1 Form 3553

[Revise the last sentence of 9.5.1 to read as follows:]

* * * The mailer certifies compliance with electronic confirmation during eDoc submission.

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

3.0 Precanceled Stamps

3.1 General Information

* * * * *

3.1.8 Return Address

* * * Mailpieces bearing precanceled stamps and any return addresses outside the Post Office of mailing must meet one of the following standards:

* * * * *

[Revise item a to read as follows:]

a. At the time of mailing, the mailer must submit a copy of the postage statement and a sample mailpiece, enclosed in a stamped envelope and addressed to the postmaster at the Post Office of the return address.

* * * * *

607 Mailer Compliance and Appeals of Classification Decisions

1.0 Mailer Compliance With Mailing Standards

1.1 Mailer Responsibility

[Revise the third sentence of 1.1 to read as follows:]

* * * For mailings that require a postage statement, the mailer certifies compliance with all applicable postal standards with electronic confirmation during eDoc submission. * * *

1.2 Postage Payment

[Revise the last sentence of 1.2 to read as follows:]

* * * A USPS employee's acceptance of the postage statement and the subsequent acceptance of the mailing does not constitute verified accuracy of that statement and does not limit the ability of the USPS to demand proper payment after acceptance when it becomes apparent such payment was not made.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

* * * * *

2.2 Basic Standards

* * * * *

2.2.7 Postage Statement

[Revise the text of 2.2.7 by deleting the last two sentences.]

* * * * *

9.0 Combining Bundles of Automation and Nonautomation Flats in Trays and Sacks

9.1 First-Class Mail

9.1.1 Basic Standards

Bundles of flats in an automation price mailing prepared under 235.6.5 must be cotrayed with bundles of flats in a Presorted price mailing under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement, using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

9.3 USPS Marketing Mail

9.3.1 Basic Standards

Bundles of flats in an automation price mailing must be cosacked with bundles of flats in a Presorted price mailing under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

9.4 Bound Printed Matter

9.4.1 Basic Standards

Bundles of flat-size pieces in a Presorted price mailing qualifying for and claiming the barcode discount under 263.3.0, 263.2.0, and 263.5.0 must be cosacked with bundles of flat-size pieces from a Presorted price mailing (not claiming the barcode discount) under the following conditions:

* * * * *

[Revise the first sentence of item h to read as follows:]

h. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

10.0 Merging Bundles of Flats Using the City State Product

10.1 Periodicals

10.1.1 Basic Standards

* * * Carrier route bundles in a carrier route mailing may be placed in the same sack or on the same pallet as 5-digit bundles from machinable (barcoded or nonbarcoded) price mailings (including pieces cobundled under 11.0) under the following conditions:

* * * * *

[Revise the first sentence of item i to read as follows:]

i. A complete postage statement(s), using the correct USPS form, must accompany each mailing job prepared under these procedures. * * *

* * * * *

10.2 USPS Marketing Mail

10.2.1 Basic Standards

Carrier route bundles from a carrier route price mailing may be placed in the same sack or on the same pallet as 5-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) under the following conditions:

* * * * *

[Revise the text of item k to read as follows:]

k. A complete postage statement, using the correct USPS form, must accompany each mailing job prepared under these procedures.

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5% Threshold

12.1 Periodicals

12.1.1 Basic Standards

* * * Five-digit bundles from a barcoded price mailing and 5-digit bundles from a nonbarcoded price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the first sentence in the introductory text of item f to read as follows:]

f. A complete postage statement, using the correct USPS form, must accompany each mailing job. * * *

* * * * *

12.2 USPS Marketing Mail

12.2.1 Basic Standards

* * * Five-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the text of item j to read as follows:]

j. A complete postage statement, using the correct USPS form, must be submitted for each mailing job prepared under these procedures.

* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5% Threshold

13.1 Periodicals

13.1.1 Basic Standards

* * * Five-digit bundles from a barcoded price mailing and 5-digit bundles from a nonbarcoded price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the first sentence in the introductory text of item g to read as follows:]

g. A complete postage statement, using the correct USPS form, must be submitted for each mailing job. * * *

* * * * *

13.2 USPS Marketing Mail

13.2.1 Basic Standards

* * * Five-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under 11.0) may be placed on the same pallet as carrier route bundles under the following conditions:

* * * * *

[Revise the text of item k to read as follows:]

k. A complete postage statement, using the correct USPS form, must be submitted for each mailing job prepared under these procedures.

* * * * *

17.0 Plant-Verified Drop Shipment

* * * * *

17.2 Program Participation

* * * * *

17.2.3 Verification at Origin BMEU

PVDS verification can be performed at the origin business mail entry unit (BMEU) under these conditions:

* * * * *

[Revise the text of item d to read as follows:]

d. Form 8125 accompanies each PVDS (or segment, if the PVDS is contained in more than one vehicle).

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–02824 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 8

RIN 0930–AA39

Medications for the Treatment of Opioid Use Disorder: Removal of the DATA–2000 Waiver Requirements

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS or ''the Department'') is issuing this supplemental notice of proposed rulemaking (SNPRM) to solicit public comment on its proposal to remove provisions authorized under the

Controlled Substances Act (CSA), as amended by the Drug Addiction Treatment Act of 2000 (DATA–2000). These changes are as a result of amendments made in the Consolidated Appropriations Act, 2023, which was enacted on December 29, 2022. Among other things, section 1262(a)(1) of this Act amended the CSA by eliminating the requirement that practitioners obtain a waiver to prescribe certain schedule III–V medications for the treatment of opioid use disorder (OUD).

DATES: Comments due on or before March 14, 2023.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at *https://www.regulations.gov.* Follow the instructions at *https://www.regulations.gov* for submitting electronic comments. Attachments should be in Microsoft Word or Portable Document Format (PDF), and please refer to RIN 0930–AA39 in all comments.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: The Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, 5600 Fishers Lane, Room 13–E–30, Rockville, MD 20857.

Note: Due to the COVID–19 pandemic, SAMHSA notes receipt of mail may be delayed and encourages submission of comments electronically to the docket.

Inspection of Public Comments: All comments received by the accepted methods and due date specified above may be posted without change to content to *https://www.regulations.gov,* which may include personal information provided about the commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain content from comments before posting, including threatening language, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. Because of the large number of public comments normally received on **Federal Register** documents, SAMHSA is not able to provide individual acknowledgments of receipt. Please allow sufficient time for mailed comments to be received timely in the event of delivery or security delays. Comments submitted by fax or email, and those submitted after the comment period will not be accepted.

FOR FURTHER INFORMATION CONTACT: Robert Baillieu, MD, MPH, Physician and Senior Advisor, SAMHSA/CSAT, 5600 Fishers Lane, Room 13–E–30, Rockville, MD 20857, Phone: 202–923–0996, Email: *Robert.Baillieu@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose

The purpose of this supplemental notice of proposed rulemaking (SNPRM) is to implement amendments made by the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), which immediately eliminated the requirement to obtain a waiver in order to prescribe certain schedule III–V medications for the treatment of OUD, commonly known as the ''X waiver.'' Accordingly, the Department is proposing to formally remove DATA 2000 related provisions (formerly under 21 U.S.C. 823(h)(2)) from 42 CFR part 8, which no longer have practical or legal effect on medical provider practices under existing law.[1]

Before the Consolidated Appropriations Act, 2023 was enacted, ''qualifying practitioners'' were required to obtain waivers (formerly under 21 U.S.C. 823(h)(2)) from a separate registration requirement, formerly under 21 U.S.C. 823(h)(1), that was needed in order to enable dispensing of certain schedule III–V narcotic medications used in maintenance or detoxification treatment. Practitioners with a waiver of this kind were limited in the number of patients they could treat with this type of medication at any one time.

In July 2016, the Department published a final rule (81 FR 44711) that added subpart F to 42 CFR part 8 under the authority of former 21 U.S.C. 823(h)(2)(B)(iii)(III). Among other things, subpart F authorized eligible practitioners with a waiver under 21 U.S.C. 823(h)(2) to request approval to treat up to 275 patients under certain conditions. On December 16, 2022, the Department published an NPRM proposing three changes to subpart F: (1) altering section headings to remove the current question-and-answer style and replacing it with a standard format; (2) updating § 8.610 to remove stigmatizing language and to also clarify that the 275-patient waiver is limited to three years in duration and; (3) removing § 8.635 to eliminate annual reporting requirements for practitioners approved to treat up to 275 patients. See NPRM entitled ''Medications for the Treatment of Opioid Use Disorder'' (87 FR 77330).

[1] It should be noted that Section 103(a)(1) of Public Law 117–215 redesignated 21 U.S.C. 823(g) as 21 U.S.C. 823(h).

II. Summary of Major Provisions

Pursuant to section 1262 of the Consolidated Appropriations Act, 2023, the Department proposes to remove in its entirety subpart F of 42 CFR part 8 in addition to language throughout 42 CFR part 8 that specifically references or implicates the DATA–2000 waiver process. The terms DATA–2000 waiver and DATA-waiver used throughout this document refer to the waiver provisions under 21 U.S.C. 823(h)(2) in effect prior to amendment by the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). Although not used in this document, the DATA-waiver has also colloquially been referred to as the ''X-waiver''.

III. Summary of Impacts

As the specific changes proposed in this SNPRM are in conformity with amendments made by section 1262(a)(1) of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), these changes will have no practical or legal effect on medical provider practices under existing law.

Public Participation

Request for Comments

In addition to seeking public comments on the full NPRM published December 16, 2022, the Department requests public comment on this Supplemental proposed amendment to the regulations under 42 CFR part 8, *Medications for the Treatment of Opioid Use Disorder.* The Department welcomes public comment on any benefits or drawbacks of the proposed amendments set forth above in this proposed rule.

The Department seeks comment on all issues raised by the proposed changes consistent with the law, including any potential unintended adverse consequences, and benefits to people with opioid use disorders. Because of the large number of public comments normally received on **Federal Register** documents, the Department is not able to acknowledge or respond to them individually. In developing the final rule, the Department will consider all comments that are received by the date and time specified in the **DATES** section of the Preamble.

Because mailed comments may be subject to delays due to security procedures, please allow sufficient time for mailed comments to be received by the deadline in the event of delivery delays. Any attachments submitted with electronic comments on

www.regulations.gov should be in Microsoft Word or Portable Document Format (PDF). Please note that comments submitted by fax or email and those submitted after the comment period deadline will not be accepted.

V. Background

On December 16, 2022, HHS issued a notice of proposed rulemaking entitled ''Medications for the Treatment of Opioid Use Disorder'' (87 FR 77330). In that NPRM, the Department proposed to modify certain provisions of part 8 to update Opioid Treatment Program (OTP) accreditation and certification standards, treatment standards for the provision of medications for opioid use disorder as dispensed by OTPs, and requirements for individual practitioners eligible to dispense (including by prescribing) certain types of Medication for Opioid Use Disorder (MOUD) with a waiver under 21 U.S.C. 823(h)(2). Subparts A through D of 42 CFR part 8 pertain to OTP accreditation, certification and treatment standards. Within these sections, there are no specific rules that pertain to the DATA-Waiver. Subpart F of this rulemaking provides criteria to expand access to buprenorphine by allowing eligible practitioners to request approval to treat up to 275 patients.

On December 29, 2022, the President signed the ''Consolidated Appropriations Act, 2023'' (Pub. L. 117–328). Section 1262 of the Act amends the Controlled Substances Act (21 U.S.C. 823(h)) and provisions in the Public Health Service Act [2] to remove the requirement that practitioners obtain a special waiver to prescribe certain medications, including buprenorphine, for the treatment of OUD.

The proposed changes in this SNPRM remove all language pertaining to the DATA-Waiver from 42 CFR part 8, pursuant to the ''Consolidated Appropriations Act, 2023'' and the changes proposed in this SNPRM that pertain to 42 CFR part 8, subpart F replace and supersede any subpart F changes proposed in the Department's December 16, 2022, NPRM (87 FR 77330). Any other proposed changes in this SNPRM are a supplement to the NPRM published on December 16, 2022 (87 FR 77330).

VI. Summary of the SNPRM

In compliance with section 1262 of the Consolidated Appropriations Act, 2023, this supplemental NPRM proposes changes to 42 CFR part 8, and revises some of the Department's proposals published on December 16, 2022 (87 FR 77330). These changes include removing 42 CFR part 8, subpart F, eliminating references to the DATA-waiver from 42 CFR part 8, subpart A, § 8.1, and modifying definitions in subpart A accordingly.

Impact Analysis

The Department has examined the impact of these proposed changes as required by Executive Order 12866 on Regulatory Planning and Review, 58 FR 51735 (October 4, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (January 21, 2011); Executive Order 13132 on Federalism, 64 FR 43255 (August 10, 1999); Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (November 9, 2000); Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (January 25, 2021); the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 847 (March 29, 1996); the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (March 22, 1995); the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (September 19, 1980); Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002); the Assessment of Federal Regulations and Policies on Families, Public Law 105–277, sec. 654, 112 Stat. 2681 (October 21, 1998); and the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (May 22, 1995), and included it in the NPRM published on December 16, 2022. Please refer to the NPRM for this analysis (87 FR 77330). The Department requests comment on how the previously-conducted analysis should be revised to encompass the effects of the CFR changes set forth in this SNPRM.

List of Subjects in 42 CFR Part 8

Administrative practice and procedure, Health professions, Methadone, Reporting and recordkeeping requirements, Substance misuse.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to supplement its December 16, 2022 NPRM (87 FR 77330) by further amending 42 CFR part 8 as follows:

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

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

Subpart A—General Provisions

■ 2. Revise § 8.1 to read as follows:

§ 8.1 Scope.

This subpart and subparts B through D of this part establish the procedures by which the Secretary of Health and Human Services (the Secretary) will determine whether an applicant seeking to become an Opioid Treatment Program (OTP) is qualified under section 303(h) of the Controlled Substances Act (CSA) (21 U.S.C. 823(h)) to dispense Medications for Opioid Use Disorder (MOUD) in the treatment of Opioid Use Disorder (OUD), and establishes the Secretary's standards regarding the appropriate quantities of MOUD that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(h)). Under this subpart and subparts B through D, an applicant seeking to become an OTP must first obtain from the Secretary or, by delegation, from the Assistant Secretary for Mental Health and Substance Use, a certification that the applicant is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification will depend upon the applicant obtaining accreditation from an accreditation body that has been approved by the Secretary. This subpart and subparts B through D also establish the procedures whereby an entity can apply to become an approved accreditation body, and the requirements and general standards for accreditation bodies to ensure that OTPs are consistently evaluated for compliance with the Secretary's standards for treatment of OUD with MOUD.

■ 2. Amend § 8.2 by:

■ a. Removing the definitions for *Additional credentialing, Approval term, Covered medications,* and *Emergency situation.*

■ b. Revising the definition for *Patient.*

■ c. Removing the definition for *Patient limit.*

■ d. Revising the definition for *Practitioner.*

■ e. Removing the definition for *Practitioner incapacity.*

The revisions read as follows:

§ 8.2 Definitions.

* * * * *

Patient, for purposes of this part, means any individual who receives continuous treatment or withdrawal management in an OTP.

* * * * *

[2] Specifically, section 1262 of the Act amends provisions in the Public Health Service Act (42 U.S.C. 290bb–36d(c); and 42 U.S.C. 290dd–3) that reference practitioners dispensing MOUD pursuant to 21 U.S.C. 823(h).

Practitioner, for purposes of this part, means a health care professional who is appropriately licensed by a state to prescribe and/or dispense medications for opioid use disorders and is authorized to practice within an OTP.

* * * * *

Subpart F—[Removed]

■ 4. Remove subpart F, consisting of §§ 8.610 through 8.655.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–03012 Filed 2–10–23; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 88, No. 29
Monday, February 13, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

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 Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a Zoom meeting on Friday February 24, 2023 from 12:00 p.m.–1:00 p.m. Eastern time. The purpose of the meeting is for the Committee to discuss a partial draft of its upcoming report on fair housing.

DATES: Friday Feb. 24, 2023 from 12:00 p.m.–1:00 p.m. Eastern time.

ADDRESSES:

Registration (Audio/Visual): https://www.zoomgov.com/j/1611150824.

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 161 115 0824.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions.

Committee meetings are available to the public through the above listed online registration link. 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. Closed captions will be provided. Indivudals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

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 *csanders@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced 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, Pennsylvania 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 address.

Agenda

Welcome and Roll Call
Discussion: Draft report (partial): Fair Housing and Zoning Practices in Pennsylvania
Public Comment
Adjournment

Dated: February 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–03001 Filed 2–10–23; 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 5:00 p.m. MT on Wednesday, February 22, 2023. The purpose of the meeting is to approve the panelists for the Committee's first briefing on housing discrimination in the state.

DATES: The meeting will take place on Wednesday, February 22, 2023, from 5 p.m.–6:30 p.m. MT.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1604048635

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 404 8635

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, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed 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. Discussion: Panel Planning
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: February 7, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02933 Filed 2–10–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

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 Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of business meetings via web conference. The purpose of the meetings is to review, discuss, and revise the draft report on police oversight and accountability in Virginia.

DATES: Tuesday, February 28, 2023, at 12:00 p.m. Eastern Time and Wednesday, March 29, 2023, at 12:00 p.m. Eastern Time.

ADDRESSES: The meetings will be held via Zoom.

February 28th Business Meeting:
—*Registration Link (Audio/Visual): https://tinyurl.com/sznn8ce8*
—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Meeting ID: 160 709 7162

March 29th Business Meeting:
—*Registration Link (Audio/Visual): https://tinyurl.com/28tak76w*
—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Meeting ID: 160 375 3590

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussions through the above call-in numbers (audio only) or online registration links (audio/visual). An open comment period at each meeting 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/or 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 meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov*.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meetings. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virginia 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.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Report Draft
V. Next Steps
VI. Public Comments
VII. Adjournment

Dated: February 8, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02998 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–147, A–533–910, A–552–834]

Paper File Folders From the People's Republic of China, India, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Janaé Martin (the People's Republic of China (China)), Eric Hawkins (India), and Jinny Ahn (the Socialist Republic of Vietnam (Vietnam)); AD/CVD Operations, Offices V and VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0238, (202) 482–1988, or (202) 482–0339, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2022, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of paper file folders from China, India, and Vietnam.[1] Currently, the preliminary determinations are due no later than March 21, 2023.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

China

On February 2, 2023, the Coalition of Domestic Folder Manufacturers (the petitioner)[2] submitted a timely request that Commerce postpone the preliminary determination in the China

[1] *See Paper File Folders from the People's Republic of China, India, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 67441 (November 8, 2022).

[2] The members of the Coalition of Domestic Folder Manufacturers are Smead Manufacturing Company, Inc. and TOPS Products LLC.

LTFV investigation.[3] The petitioner stated that it requests postponement ''because Commerce recently selected {Ningbo Guangbo Import & Export Co., Ltd.} as an additional mandatory respondent, and additional time will be required to evaluate and comment upon that company's questionnaire responses due March 6, 2023.''[4]

India

On February 2, 2023, the petitioner submitted a timely request that Commerce postpone the preliminary determination in the India LTFV investigation.[5] The petitioner stated that it requests postponement ''to enable Commerce to evaluate fully the initial questionnaire responses of Navneet India Limited {} and solicit supplemental information, as necessary.''[6]

Vietnam

On February 2, 2023, the petitioner submitted a timely request that Commerce postpone the preliminary determination in the Vietnam LTFV investigation.[7] The petitioner stated that it requests postponement ''because Commerce very recently selected CRE8 Direct (HK) Co., Ltd., as an additional respondent in the Vietnam investigation {and} . . . more time may be needed to enable Commerce to evaluate fully the initial questionnaire responses of Three-Color Stone (Vietnam) Company Limited and solicit supplemental information, as necessary.''[8]

For the reasons stated above and because there are no compelling reasons to deny the requests, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determinations in the above-referenced investigations no later than May 10, 2023. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–03016 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Petitioner's Letter, ''Paper File Folders from China: Petitioner's Request for Postponement of the Preliminary Determination,'' dated February 2, 2023.

[4] *Id.*

[5] *See* Petitioner's Letter, ''Paper File Folders from India: Petitioner's Request for Postponement of the Preliminary Determination,'' dated February 2, 2023.

[6] *Id.*

[7] *See* Petitioner's Letter, ''Paper File Folders from Vietnam: Petitioner's Request for Postponement of the Preliminary Determination,'' dated February 2, 2023.

[8] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC705]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Whittier Head of the Bay Cruise Dock Project in Whittier, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Turnagain Marine Construction (TMC) for authorization to take marine mammals incidental to the cruise dock construction project in Whittier, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 15, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.harlacher@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities#active-authorizations.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the

availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 16, 2022, NMFS received a request from TMC for an IHA to take marine mammals incidental to the construction of the cruise ship dock in Whittier, Alaska. Following NMFS' review of the application, TMC provided further information on October 26, 2022, a revised application on January 9, 2023, and the application was deemed adequate and complete on January 10, 2023. Subsequently, TMC submitted an additional update to its application on February 3, 2023. TMC's request is for take of five species of marine mammals by Level B harassment and, for a subset of two species, Level A harassment. Neither TMC nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

TMC proposes to construct the Whittier Head of the Bay cruise ship dock project in the Passage Canal in Whittier, Alaska. The proposed project will cover a 12-month window during which approximately 129 days of pile-installation and -removal activity will occur. This project involves installation and removal of 72 36-inch (in) (0.91 meter (m)) temporary steel pile guides and installation of 36 36-in, 16 42-in (1.1-m), and 20 48-in (1.2-m) permanent steel piles. Three different installation methods will be used including vibratory installation of piles into dense material, impact pile driving to drive piling to tip elevation, and the Down-the-Hole (DTH) hammer to drill pile into the bedrock. TMC will deploy a bubble curtain to the 60-foot (ft.) (18.3-m) isobath. This would be used during all activities that fall below the 60-ft. isobath. Sounds resulting from pile installation, removal, and drilling may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment.

Dates and Duration

The proposed IHA would be effective from April 1, 2023 through March 31, 2024. The total expected work duration would be approximately 321 hours over 129 nonconsecutive days (an estimated 45 days of DTH, 59 days of vibratory pile installation, and 24.5 days of impact pile driving). An estimated 156 hours over 58.5 days would use a bubble curtain, and 165 hours over 70 days would be unattenuated. The construction timeline takes into account the mobilization of materials and potential delays due to delayed material deliveries, equipment maintenance, inclement weather, and shutdowns. TMC plans to conduct all work during daylight hours.

Specific Geographic Region

The proposed activity will occur in the head of Passage Canal, a bay of Prince William Sound in South Central Alaska in Whittier, Alaska (Figure 1–2). This proposed cruise ship dock would be approximately one kilometer (0.75 miles) northwest of downtown Whittier. Passage Canal is an approximately 12-mile-long (19.3 kilometer (km)) fjord that measures less than 2 miles (3.2-km) across from shore to shore at its widest point and reaches depths over 1,000-ft (304.8-m) at its entrance near Decision Point and Blackstone Bay. Depths at the head of Passage Canal are shallower, approximately 100 to 200-ft (30.48 to 60.96-m).

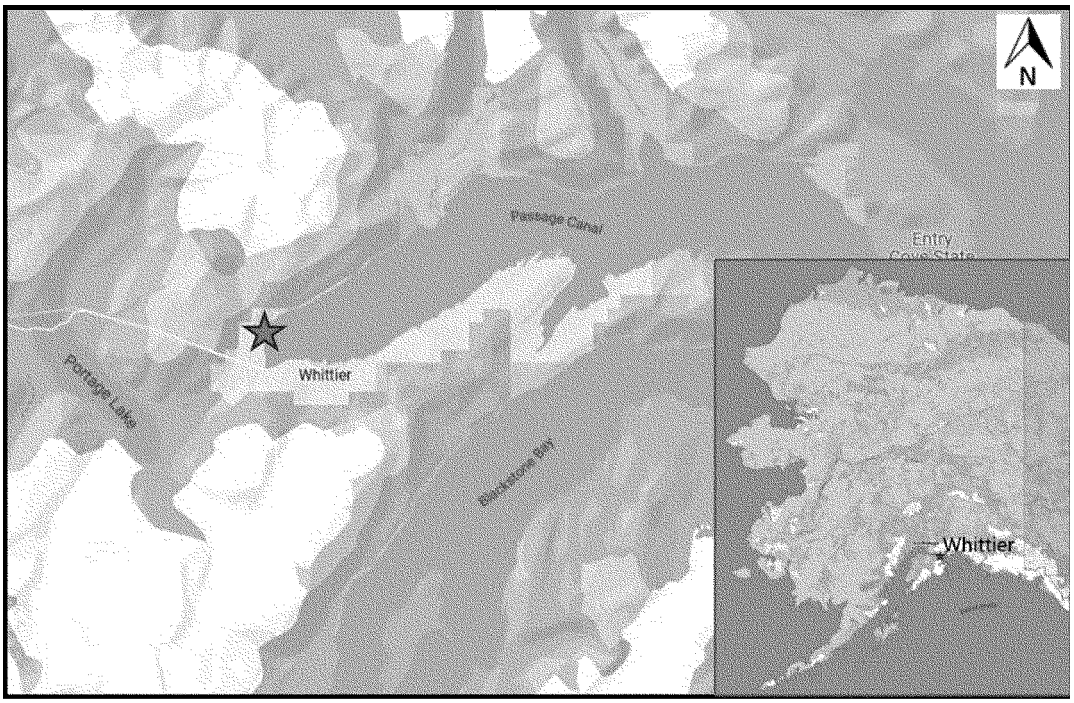

Figure 1. Map illustrating the proposed project location in Whittier, Alaska

Detailed Description of the Specified Activity

TMC proposes to install and remove 72 steel piles to guide the 72 permanent piles into place to support the cruise ship berth and floating dock. The piles would be installed using three methods over 129 days, which incorporated buffer days to account for unforeseen interruptions. These methods include vibratory pile installation and removal, impact pile driving, and DTH drilling (see Table 1).

Pile templates would be constructed using temporary pilings vibrated into position. Three or four temporary 36-in diameter pilings may be needed for each template. Most temporary piles would be vibrated into place; however, up to 36 of these may need to make use of a DTH drill in locations where the bedrock is shallow. For each 36-in temporary pile, an estimated 2 cubic yards (CY) (1.53 cubic meter) of drill cuttings would be produced. Using the templates as guides to position the permanent piling, the piling would be vibrated into dense material. The piling would then be driven to tip elevation using an impact hammer. Once the piles achieve the tip elevation, a DTH hammer would be placed inside the piling and a shaft would be drilled into the bedrock. The rock shaft would be filled with concrete to anchor the pile to the bedrock. The 36 permanent 36-in diameter steel piles supporting the approach trestle would be vibrated to at least 24 feet (7.31-m) below the mudline. If the soil depth is less than 24 feet, the piles would then be drilled at least 10 feet (3.05-m) deep into bedrock with a DTH hammer and bit. For each 36-in permanent pile, an estimated 10 CY (7.65 cubic meter) of drill cuttings would be produced. The 16 permanent 42-in diameter and 20 permanent 48-in diameter steel piles would be vibrated through the soil layer to bedrock to support other dock components. A 38-in diameter shaft would be drilled through the 42- and 48-in diameter into the bedrock with the DTH hammer and bit, and then filled with concrete to a depth of at least 25 feet (7.62-m) to anchor the piles.

TMC divides the work into two areas by depth; activities occurring within the 60-ft. isobath or shallower and, those occurring in depths greater than the 60-ft. isobath. The 36 36-in permanent piles supporting the approach trestle and the 36 36-inch temporary piles used as template guides for them would fall within the 60-ft. isobath. The 16 42-inch and 20 48-inch for the mooring trestle and dolphins (and the 36 36-inch temporary piles used as template guides for these) would fall within waters deeper than the 60-ft. isobath. A bubble curtain would be deployed at a depth of 60 feet (18.3-m) and would be used during all activities that fall within the 60-ft. isobath.

Additional actions occurring under the proposed action that are not anticipated to generate in-water noise resulting in marine mammal harassment include vessels to support construction and out of water dock components. NMFS does not expect, that these ancillary activities will harm or harass marine mammals and no incidental takes are expected as a result of these activities. Therefore, these activities are not discussed further in this document.

TABLE 1—PILE INSTALLATION METHODS AND DURATIONS

Pile size, method	Number of piles	Duration/impacts per pile	Piles drive/day	Estimated days
36-in steel pile, Vibratory Installation (temporary)	72	10 min	4	18
36-in steel pile, Vibratory Removal (temporary)	72	10 min	4	18
36-in steel pile, Vibratory Installation (permanent)	36	15 min	4	9
42-in steel pile, Vibratory Installation	16	15 min	4	4
48-in steel pile, Vibratory Installation	20	15 min	2	10

TABLE 1—PILE INSTALLATION METHODS AND DURATIONS—Continued

Pile size, method	Number of piles	Duration/impacts per pile	Piles drive/day	Estimated days
36-in steel pile, Impact Installation (permanent)	36	1800 strikes	4	9
42-in steel pile, Impact Installation	16	2400 strikes	3	5.5
48-in steel pile, Impact Installation	20	2400 strikes	2	10
36-in steel pile, DTH Installation (temporary)	36	60 min	4	9
36-in steel pile, DTH Installation (permanent)	36	150 min	2	18
42-in steel pile, DTH Installation	16	150 min	2	8
48-in steel pile, DTH Installation	20	150 min	2	10

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. 2021 SARs (*e.g.,* Muto et al., 2021) and the draft 2022 SARs (*e.g.,* Young *et al.,* 2022). All values presented in Table 2 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeanglinae*	Central North Pacific Stock	-,D,Y	10,103 (0.3, 7,890, 2006)	83	26
		Western North Pacific	E,D,Y	1,107 (0.3, 865, 2006)	3	2.8
		California/Oregon/Washington	T,D,Y	4,973 (0.05, 4,776, 2018)	28.7	48.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orca orcinus*	Alaska Resident	-,-,N	1,920 (N/A, 1,920, 2019)	19	1.3
		Gulf of Alaska/Aleutian Islands/Bering Sea Transient.	-,-,N	587 (N/A, 587, 2012)	5.9	0.8
		AT1 Transient	-,D,Y	7 (N/A, 7, 2019)	0.01	1
Family Phocoenidae (porpoises):						
Dall's porpoise [4]	*Phocoenoides dalli*	Alaska Stock	-,-,N	15,432 (0.097, 13, 110, 2021).	131	37
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western Stock	E,D,Y	52,932 (N/A, 52,932, 2019)	318	254
Family Phocidae (earless seals):						

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vituline richardii*	Clarence Strait Stock	-,-,N	27,659 (N/A, 24,854, 2015)	746	40

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated N_{min} and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

On January 24, 2023, NMFS published the draft 2022 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*). The Alaska and Pacific Ocean SARs include a proposed update to the humpback whale stock structure. The new structure, if finalized, would modify the MMPA-designated stocks to align more closely with the ESA-designated DPSs. Please refer to the draft 2022 Alaska and Pacific Ocean SARs for additional information.

NMFS Office of Protected Resources, Permits and Conservation Division has generally considered peer-reviewed data in draft SARs (relative to data provided in the most recent final SARs), when available, as the best available science, and has done so here for all species and stocks, with the exception of a new proposal to revise humpback whale stock structure. Given that the proposed changes to the humpback whale stock structure involve application of NMFS's Guidance for Assessing Marine Mammals Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis in this proposed authorization based on the status quo stock structure identified in the most recent final SARs (2021; Muto *et al.,* 2022).

As indicated above, all five species (with eight managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 5 of the IHA application. While some species have been reported in or near the area, it is very rare, and the temporal and/or spatial occurrence of these species is more likely outside of the Passage Canal and outside of the harassment zones. Therefore, given this information take is not expected to occur and they are not discussed further beyond the explanation provided here.

In addition, the northern sea otter (*Enhydra lutris kenyoni)* may be found in the Passage Canal. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Humpback Whale

The humpback whale is found worldwide in all oceans. Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 Distinct Population Segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. Humpback whales found in the project area are predominantly from the three DPSs that are present in Alaska.

Whales from the Western North Pacific (WNP), Mexico, and Hawaii DPSs overlap on feeding grounds off Alaska and are not visually distinguishable. Members of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Based on an analysis of migration between winter mating/calving areas and summer feeding areas using photo-identification, Wade (2021) concluded that the humpback whales feeding in Alaskan waters belong primarily to the recovered Hawaii DPS (89 percent), with small contributions from the threatened Mexico DPS (11 percent) and the endangered WNP DPS (0.4 percent; rounded to 1 percent in NMFS 2021a).

The DPSs of humpback whales that were identified through the ESA listing process do not equate to the existing MMPA stocks. The updated stock delineations for humpback whales under the MMPA are currently out for public review in the draft 2022 SAR's, as mentioned above. Until this review is complete, NMFS considers humpback whales in Southeast Alaska to be part of the Central North Pacific stock (Muto *et al.,* 2021).

Humpback whales are found throughout Southcentral Alaska in a variety of marine environments, including open-ocean, near-shore waters, and areas within strong tidal currents (Dahlheim *et al.,* 2009). Humpback whales generally arrive in Southeast Alaska in March and return to their wintering grounds in November. Some humpback whales depart late or arrive early to feeding grounds, and therefore the species can occur in the Southeast Alaska region year-round (Straley, 1990, Straley *et al.,* 2018). Across the region, there have been no recent estimates of humpback whale density.

NMFS identified a portion of Prince William Sound as a Biologically Important Area (BIA) for humpback whales for feeding during the months of September through December; however, the proposed action area is northwest of the boundaries of the BIA (NMFS 2022c). BIAs are spatial and temporal boundaries identified for certain marine mammal species where populations are known to concentrate for specific behaviors such as migration, feeding, or breeding. This BIA was identified due to boat-based surveys that observed high number of humpback whales feeding (mainly on Pacific herring) in the area (Ferguson *et al.,* 2015). Humpback whale BIAs helped to inform the critical habitat designation finalized by NMFS in 2021 (86 FR 21082, April 21, 2021). Much of Prince William Sound is also within humpback whale critical habitat, and material and equipment barges' routes would transit through critical habitat on the way to the project site. However, the proposed project is approximately 17 km west of the boundaries of the critical habitat, and

the ensonified action area extends through Passage Canal, but ends about 3.5 kilometers west of the critical habitat boundary.

In Prince William Sound and Passage Canal, humpback whales are traditionally observed during seasons of high prey concentration, May through September (Witteveen *et al.,* 2011; SolsticeAK 2022). However, feeding humpback whales' presence in the Gulf of Alaska has also been correlated closely with peak herring abundance, which occurs in the late fall and early winter. It has been suggested that some whales remain longer in northern waters to maximize food consumption prior to migrating south to breeding grounds in the winter, and a few may skip migration altogether (Straley *et al.,* 2018). Therefore, humpbacks may be present year-round in Prince William Sound, but are less common during the late winter and early spring.

While sightings of humpbacks are fairly common in Prince William Sound, they are less common in Passage Canal (SolsticeAK 2022). No humpback whales were observed within Passage Canal during the Whittier Ferry Terminal Modification Project in April 2020 (Leonard and Wisdom 2020).

Dall's Porpoise

All Dall's porpoises in Alaska are members of the Alaska stock. This species can be found in offshore, inshore, and nearshore habitats. Dall's porpoises are widely distributed across the North Pacific Ocean and are one of the most common cetaceans in the Gulf of Alaska (Rone *et al.,* 2017). Surveys conducted in the Gulf of Alaska from 2009 to 2015 indicate that Dall's porpoises inhabit all strata on the continental shelf, slope, and pelagic waters with the greatest densities occurring in deeper inshore and slope habitats (Rone *et al.,* 2017).

From data collected during surveys conducted from 2007 to 2015, Dall's porpoise presence in Prince William Sound varied based on season. They were most dispersed throughout Prince William Sound in the summer months but tended towards deeper waters in the middle of the Sound, away from shorelines. In the fall and winter, they were more often observed in the periphery of Prince William Sound with concentrations in bay areas, likely following herring shoals towards their overwintering areas. Their distribution was most concentrated in the spring, with one major activity center in eastern Prince William Sound. These porpoises were not typically found in shallow habitats or confined fjords like that of Passage Canal, preferring open water escape routes where they are able to use quick swimming techniques to evade predators such as killer whales (Moran *et al.,* 2018).

Dall's porpoises are frequently observed near the entrance of Passage Canal but not often seen far down the canal near Whittier (DOT&PF 2019). Correspondence with local tour boat captains confirmed there are occasional sightings of Dall's porpoise in Passage Canal, but they are more often seen farther out towards Prince William Sound in Well's Passage (SolsticeAK 2022). The Whittier Ferry Terminal Modification Project Marine Mammal Monitoring Report indicated that there was one sighting of a group of six Dall's porpoises in Passage Canal during construction work in April 2020 (Leonard and Wisdom 2020).

Killer Whale

Killer whales occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS, 2016). The three stocks that are most likely to occur in Prince William Sound are the southern Alaska Resident stock, Gulf of Alaska/Aleutian Islands/Bering Sea Transient stock, and the AT1 Transient stock (Muto *et al.,* 2022).

There are three distinct ecotypes, or forms, of killer whales recognized: Resident, Transient, and Offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Both residents and transients are common in a variety of habitats and all major waterways, including protected bays and inlets. There does not appear to be strong seasonal variation in abundance or distribution of killer whales, but there was substantial variability between years (Dahlheim *et al.,* 2009). Spatial distribution has been shown to vary among the different ecotypes, with resident and, to a lesser extent, transient killer whales more commonly observed along the continental shelf, and offshore killer whales more commonly observed in pelagic waters (Rice *et al.,* 2017).

In the Gulf of Alaska, the offshore killer whale ecotype is found in pelagic waters off the Aleutian Islands to California and mainly prey on sharks; the resident ecotype (southern Alaska residents) ranges from Kodiak Island to Southeast Alaska and prefer to eat fish; and two different transient populations (Gulf of Alaska transients and AT1 transients) prefer marine mammals are most often found near the Hinchinbrook Entrance and Montague Strait (Myers *et al.,* 2021). A tagging study focused on resident killer whale movements in Prince William Sound found that killer whales' favored use areas were highly-seasonal and pod specific, likely timed with seasonal salmon returns to spawning streams (Olsen *et al.,* 2018).

With the exception of the AT1 Transient stock, the populations that are known to occur in Prince William Sound are not strategic or depleted under the MMPA. Long-term studies of pods belonging to the southern Alaska resident stock in the Gulf of Alaska indicate these populations are increasing at an estimated growth rate of approximately 3.4 percent (Matkin *et al.,* 2014). However, both resident and transient killer whales were significantly impacted by the 1989 Exxon Valdez Oil spill. Prior to the spill, the resident AB pod consisted of 36 members and from 1989 to 1990, 14 whales disappeared from the pod. The AB pod is considered recovering; however, due to slow reproduction rates only 28 individuals were observed in 2005 (Exxon Valdez Oil Spill Trustee Council 2021). The AT1 Transient stock also experienced high mortality following the oil spill, as 11 of the original 22 individuals disappeared between 1989 and 1992. The AT1 stock currently numbers only seven individuals (Muto *et al.,* 2021).

Results from the Olsen *et al.,* (2018) satellite tagging surveys in Prince William Sound from 2006 to 2014 revealed several core use areas for resident killer whales based on pod and season. Most resident pods primarily concentrated at the southern end of Prince William Sound in Hinchinbrook Entrance during the summer and Montague Strait in the late summer and fall. A few of the pods were observed making trips to deeper glacial fjords including Passage Canal, but these areas did not appear to be an important focus area for the pods. The AD16 pod (estimated 9 animals) and AK pod (estimated 19 animals) were the most frequently observed in the northern glacial fjords of the sound (Muto *et al.,* 2022; Olsen *et al.,* 2018).

Additionally, a 27-year photo identification study in Prince William Sound and Kenai Fjords surveyed both populations of transient killer whales. The study found that the AT1 transients had higher site fidelity to the area, while the Gulf of Alaska transients had a higher exchange of individuals (Matkin *et al.,* 2012). Resighting data indicated that the AT1 population are resident to the area and the Gulf of Alaska transients are part of a larger population with a more extensive range. Throughout the study, survival estimates for both populations was generally high, but there was significant

population reduction in the AT1 transient after the Exxon Valdez oil spill (Matkin *et al.,* 2012). There was no detectable decline in the larger Gulf of Alaska transient population after the oil spill (Matkin *et al.,* 2012).

Consultation with marine wildlife tour operators confirmed that killer whales are often observed in Prince William Sound, but less commonly seen in Passage Canal (SolsticeAK 2022). There are prey resources (marine mammals, salmon, etc.) present that may draw killer whales to the area, particularly during salmon runs from June through October, but concentration of prey is not likely large enough to keep killer whales in the area for long. During the Whittier Ferry Terminal Modification Project in April 2020, there were no observations of killer whales in the action area (Leonard and Wisdom 2020).

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Alaska and are one of the most common marine mammals in Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey, feeding in marine, estuarine, and occasionally fresh waters (Womble *et al.,* 2009, Allen and Angliss, 2015). Harbor seals are generally non-migratory and, with local movements associated with such factors as tide, weather, season, food availability and reproduction. They deviate from other pinniped species in that pupping may occur on a wide variety of haul-out sites rather than particular major rookeries (ADF&G 2022).

Distribution of the Prince William Sound stock, the only stock considered in this application, range from Elizabeth Island off the southwest tip of the Kenai Peninsula to Cape Fairweather, including Prince William Sound, the Copper River Delta, Icy Bay, and Yakutat Bay (Muto *et al.,* 2022). The Prince William Sound stock of harbor seals are commonly sighted residents and can occur on any given day in the action area, although they tend to be more abundant during the fall months (Womble and Gende 2013).

Communication with Whittier tour operators indicated that harbor seals are often seen in Passage Canal, but generally do not gather near Whittier in large numbers (SolsticeAK 2022). They sometimes haul out at the Whittier Public Boat Harbor around 1,500 meters away (DOT&PF 2019). The Marine Mammal Monitoring Report from the Whittier Ferry Terminal Modification reported 10 sightings of 13 harbor seals during the April 2020 construction period, which agrees with the tour operators' accounts (commonly seen, generally individual animals rather than groups) (Leonard and Wisdom 2020).

Steller Sea Lion

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345; May 5, 1997). The eastern DPS remained classified as threatened until it was delisted in November 2013. The western DPS (those individuals west of the 144° W longitude or Cape Suckling, Alaska) was upgraded to endangered status following separation of the DPSs, and it remains endangered today. There is regular movement of both DPSs across this 144° W longitude boundary (Jemison *et al.,* 2013) however, due to the distance from this DPS boundary, it is likely that only western DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the western DPS. Sea lions from the eastern DPS, are not likely to be affected by the proposed activity and are not discussed further.

Steller sea lions do not follow traditional migration patterns, but will move from offshore rookeries in the summer to more protected haulouts closer to shore in the winter. They use rookeries and haulouts as resting spots as they follow prey movements and take foraging trips for days, usually within a few miles of their rookery or haulout. They are generalist marine predators and opportunistic feeders based on seasonal abundance and location of prey. Steller sea lions forage in nearshore as well as offshore areas, following prey resources. They are highly social and are often observed in large groups while hauled out but alone or in small groups when at sea (NMFS 2022f).

Steller sea lions are distributed throughout Southcentral Alaska, with patterns loosely correlated to aggregations of spawning and migrating prey species (Sinclair and Zeppelin 2002; Sinclair *et al.,* 2013). Haulout sites in Southcentral Alaska, at and west of Cape Suckling, were documented through aerial surveys (Fritz *et al.,* 2013). Although there are no documented haulouts or rookeries within Passage Canal, a small number of Steller sea lions have been reported hauling out year-round on a mooring buoy in Shotgun Cove (SolsticeAK 2022; DOT&PF 2019).

Steller sea lions occur year-round in the program action area. Steller sea lions are drawn to fish processing plants and high forage value areas such as anadromous streams. Passage Canal has several anadromous streams that support salmon species and one fish processing plant with an Alaska Department of Environmental Conservation (ADEC) permitted outfall that also attracts Steller sea lions (ADF&G 2022a). There were 9 Steller sea lion groups (representing about 27 individuals) sighted during marine mammal monitoring of the Whittier Ferry Terminal Modification Project in April 2020. Groups ranged from one to seven animals. Steller sea lions were most often observed floating and/or swimming at the surface. Sightings occurred over a period of 6 days and approximately 86 hours of monitoring time (Leonard and Wisdom 2020).

Critical habitat for Steller sea lions was designated by NMFS in 1993 based on the following essential physical and biological habitat features: terrestrial habitat (including rookeries and haulouts important for rest, reproduction, growth, social interactions) and aquatic habitat (including nearshore waters around rookeries and haulouts, free passage for migration, prey resources, and foraging habitats) (58 FR 45269).

The nearest rookery is Seal Rocks located in the Hinchinbrook Entrance between Hinchinbrook and Montague Islands, 124 kilometers (67 nautical miles) southeast of the proposed berth site. The nearest major haulouts are Perry, approximately 44 kilometers (24 nautical miles) southeast of the proposed berth site and Dutch Group, approximately 52 kilometers (28 nautical miles) east (Alaska Fisheries Science Center 2022). Since the ensonified action area encompasses most of Passage Canal, it would intersect Steller sea lion designated critical habitat. Additionally, since most of Prince William Sound is within Steller sea lion critical habitat, material and equipment barges' routes would transit through critical habitat on the way to the project site.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal

species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2005; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity can occur from impact pile driving, vibratory driving, and DTH. The effects of underwater noise from TMC's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

Description of Sound Source

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, impact and vibratory pile driving, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project: impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate.

Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by the DTH method contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and non-impulsive sound source types simultaneously.

The likely or possible impacts of TMC's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the TMC's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving or drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*),

beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), and California sea lions (*Zalophus californianus*). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. Nachtigall *et al.,* (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018).

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious

fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul-out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and these haulout sites (outside of Passage Canal). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The TMC's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. However, since the proposed location is not heavily used by marine mammals and is in close proximity to an area currently used by large passenger and shipping vessels, and two active harbors. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH, impact, and vibratory pile driving, elevated levels of underwater noise would ensonify the project area where both fish and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6 m) radius around the pile (Everitt *et al.,* 1980). The sediments of the project site will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the floating dock for the cruise ship dock. The total seafloor area likely impacted by the project is relatively small compared to the available habitat in Southcentral Alaska and does not include any Biologically Important Areas or other habitat of known importance. The area is highly influenced by anthropogenic activities. Additionally, the total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species

(*e.g.,* crustaceans, cephalopods, fish, zooplankton, etc.). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013), and can be mitigated by the use of a bubble curtain (Caltrans 2020).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the Passage Canal are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for Dall's porpoise and harbor seals, due to the cryptic nature of these species in context of larger predicted auditory injury zones. Auditory injury is unlikely to occur for low- and mid-frequency species and otariids, based on the likelihood of the species in the action area, the ability to monitor the entire smaller shutdown zone, and because of the expected ease of detection for the former groups. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to

provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB referenced to 1 micropascal (re 1 μPa) for continuous (*e.g.,* vibratory pile-driving, DTH drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* impact pile driving and DTH hammering) or intermittent (*e.g.,* scientific sonar) sources.

TMC's proposed activity includes the use of continuous (vibratory hammer and DTH) and impulsive (DTH and impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). TMC's proposed activity includes the use of impulsive (impact pile-driving and DTH) and non-impulsive (vibratory hammer and DTH) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (Table 5). Additionally, a bubble curtain would be deployed at a depth of 60 feet and would be used during all activities that fall within the 60-ft. isobath. Therefore, a 5dB reduction is applies to the estimated sound source levels for driving these piles only.

TABLE 5—OBSERVED SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile size, method	SPL (dB)	SEL (dB)	Reference
Bubble Curtain in use (depths of 60-ft or less)			
36-in steel pile, Vibratory Installation (temporary)	161 RMS		U.S. Navy 2015.
36-in steel pile, Vibratory Removal (temporary)	161 RMS **		U.S. Navy 2015.
36-in steel pile, DTH Installation (temporary)	174 RMS	164 SEL	Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
36-in steel pile, Vibratory Installation (permanent)	161 RMS **		U.S. Navy 2015.
36-in steel pile, Impact Installation (permanent)	187 RMS **	179 SEL **	U.S. Navy 2015.
36-in steel pile, DTH Installation (permanent) *	169 RMS **	159 SEL **	Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
No Bubble Curtain (depths greater than 60-ft)			
36-in steel pile, Vibratory Installation (temporary)	166 RMS		U.S. Navy 2015.
36-in steel pile, Vibratory Removal (temporary)	166 RMS		U.S. Navy 2015.
42-in steel pile, Vibratory Installation	168.2 RMS		Austin et al. 2016.
48-in steel pile, Vibratory Installation	168.2 RMS		Austin et al. 2016.
42-in steel pile, Impact Installation	198.6 RMS	186.7 SEL	Austin et al. 2016.
48-in steel pile, Impact Installation	198.6 RMS	186.7 SEL	Austin et al. 2016.
36-in steel pile, DTH Installation (temporary)	169 RMS **	159 SEL **	Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
42-in steel pile, DTH Installation *	174 RMS	164 SEL	Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
48-in steel pile, DTH Installation *	174 RMS	171 SEL	Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.

Note: SELss = single strike sound exposure level; RMS = root mean square.

* Source levels proposed here differ from those used in TMC's application as NMFS has updated their acoustic guidance on DTH, resulting in larger Level B harassment SPLs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance#other-nmfs-acoustic-thresholds-and-tools*).

** Attenuated source levels with 5dB reduction due to use of a bubble curtain during these activities (Caltrans, 2015; Austin *et al.,* 2016).

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021) (Table 1 includes number of piles and duration; Table 5 includes sound pressure and sound exposure levels for each pile type).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for TMC's proposed activities. The Level B harassment zones and areas of zones of influence (ZOIs) for the proposed activities are shown in Table 6.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of

piles per day, duration and/or strikes per pile) are presented in Table 1. The maximum RMS SPL, SEL, and resulting isopleths are reported in Table 5 and 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids	
Bubble Curtain in use (depths of 60 ft or less)						
36-in steel pile, Vibratory Installation (temporary)	5.2	0.5	7.7	3.2	0.2	5,412
36-in steel pile, Vibratory Removal (temporary)	5.2	0.5	7.7	3.2	0.2	5,412
36-in steel pile, DTH Installation (temporary)	681.1	24.5	820.9	368.8	26.9	6,310
36-in steel pile, Vibratory Installation (permanent)	6.8	0.6	10.1	4.2	0.3	5,412
36-in steel pile, Impact Installation (permanent)	2,015.1	71.7	2,400.3	1,078.4	78.5	631
36-in steel pile, DTH Installation (permanent)*	799.7	28.4	952.6	428	31.2	6,310
No Bubble Curtain (depths greater than 60 ft)						
36-in steel pile, Vibratory Installation (temporary)	11.2	1	16.6	6.8	.05	11,659
36-in steel pile, Vibratory Removal (temporary)	11.2	1	16.6	6.8	.05	11,659
42-in steel pile, Vibratory Installation	20.6	1.8	30.5	12.5	0.9	16,343
48-in steel pile, Vibratory Installation	13	1.2	19.2	7.9	0.6	16,343
42-in steel pile, Impact Installation	6,570.9	233.7	7,827	3,516.4	256	3,744
48-in steel pile, Impact Installation	5,014.6	178.4	5,973.1	2,683.6	195.4	3,744
36-in steel pile, DTH Installation (temporary)	1,484.7	52.8	1,768.5	794.6	57.9	*39,811
42-in steel pile, DTH Installation*	1,722.9	61.3	2,052.2	922	67.1	*39,811
48-in steel pile, DTH Installation*	5,045.7	179.5	6,010.2	2,700.2	196.6	*39,811

*Differs from TMC's application due to difference in source level use. See Table 5.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including presence, local knowledge, group dynamics, or other relevant information, that will inform the take calculations. We also describe how the information provided above is brought together to produce a quantitative take estimate.

Available information regarding marine mammal occurrence and abundance in the vicinity of Passage Canal includes local knowledge, previous marine construction projects in the Whittier area, and available scientific literature. A summary of proposed take is in Table 7. To accurately describe species occurrence near the action area, marine mammals were described as either common or infrequent.

To obtain more accurate estimates of potential take by Level B harassment, TMC estimated an hourly occurrence probability of each marine mammal species in the action area rather than a weekly or daily estimation, since pile driving activities would not occur over an entire day, but rather over a certain number of hours. Occurrence probability estimates are based on conservative density approximations for each species and factor in historic data of occurrence, seasonality, and group size in the Passage Canal and/or nearby Prince William Sound.

Assumptions for these hourly estimations were that common species (Steller sea lion, harbor seal) would have two group sightings per day in Passage Canal, and infrequent species would have three group sightings per week in Passage Canal, or slightly fewer than one group sighting every two days (Table 7). In these estimations, a sighting does not equal one animal; a sighting equals one group of each particular species. To standardize observation estimates across species, these numbers were distilled down to obtain the hourly occurrence probability for each species. Additionally, one day was equated to 12 hours rather than 24 hours to obtain a rough estimate of observations during daylight hours when pile driving and project activities would be occurring, and to obtain more conservative estimates of species occurrence. TMC states that this hourly estimate provides a more accurate representation of actual possible takes in Passage Bay. For more detailed breakdown of each species occurrence information, see Table 7 in TMC's application.

TABLE 7—ESTIMATED OCCURRENCE OF GROUP SIGHTING OF MARINE MAMMALS

Species occurrence in the action area	Group sighting occurrence estimate		
	Weekly	Daily	Hourly
Common (Steller sea lion, harbor seal)	14	2	0.17
Infrequent (humpback whale, Dall's porpoise, killer whale)	3	0.5	0.04

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Using the hourly occurrence probability for a species, this was multiplied by the estimated group size and by the number of hours of each type of pile driving activity for total take estimate.

Estimated take = Hourly occurrence estimate × average group size × hours of pile driving activity

For species infrequently seen in the Passage Canal (humpback whale, Dall's porpoise, and killer whale) and rarely seen close to the project location, only hours of pile driving with the largest resulting isopleths (DTH and vibratory driving) were used to calculate these species take estimates. Impact pile driving was excluded from these analyses because the Level A harassment isopleth was larger than the Level B harassment isopleth, and therefore construction would be shut down before they approach the Level B harassment zone.

Take by Level A harassment is also requested for Dall's porpoise and harbor seals given their frequency in the action area, the large Level A harassment zones for HF cetaceans and phocids, the possibility they may not be seen in the water before pile driving could be shut down, and the fact that Level A harassment isopleths for certain pile driving activities extend to Whittier Seafood's outfall, a known marine mammal foraging area.

The take calculations for Level A harassment are based on the occurrence estimate for the species in the largest Level B harassment zone (16,343 meters) reduced by a factor for each smaller Level A harassment isopleth. While NMFS updated the DTH source levels, resulting in DTH having the largest Level B harassment isopleth, the shoreline is limited in Passage Canal and the largest practical Level B harassment isopleth is the one used by TMC for the original calculation of take by Level A harassment. Therefore, the updated DTH values do not impact the take calculation. The Level A harassment isopleth for each species and specific activity was divided by the largest Level B harassment isopleth (16,343 m), giving a species multiplier per hour for occurrence in the smaller Level A harassment isopleth. This was multiplied by the number of hours of the specific activity type, giving the estimate for take by Level A harassment during that activity. For example, the Level A harassment isopleth for phocid pinnipeds during impact pile driving of 36-in steel piles is 2,323 meters, so Level B harassment estimates are multiplied by a factor of 0.14 (2,323/16,343 = 0.14) to estimate take in the Level A harassment zone. All take Level A harassment was conservatively calculated using isopleths from unattenuated source levels. Take by Level B harassment was calculated based on occurrence estimates for the area encompassed by the largest isopleth generated by unattenuated source levels (*i.e.,* all of Passage Canal).

Additionally, the shutdown zone for phocid pinnipeds was decreased compared to the calculated zone for pile driving activities that encompassed the public boat harbor approximately 1,500 meters away due to the possibility of harbor seals using the area as a haulout. The shutdown zone was reduced to 1,360-m for impact pile driving 42- and 48-in pile sizes and DTH drilling of 48-in piles and the calculated take by Level A harassment has been doubled for this species.

TABLE 8—PROPOSED AUTHORIZED AMOUNT OF TAKING AND PERCENT OF STOCK

Species	Stock	Average group size	Take by Level A harassment	Take by Level B harassment	Total take	Percent of stock
Humpback whale	Hawaii DPS	2.4	0	22	22	<1
	WNP DPS		0	1	1	<1
	Mexico DPS		0	2	2	<1
Dall's Porpoise	Alaska	4.3	9	36	45	<1
Killer Whale *	Alaska Resident	14	0	116	116	6
	GOA/Aleutian Islands/Bering Sea Transient.		0	29	29	4.9
Harbor Seal	Prince William Sound	3.5	40	170	210	<1
Steller Sea Lion	Western US	4	0	218	218	<1

* AT1 transient stock take calculation resulted in 0 takes, therefor no takes were requested or are proposed for authorization.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

NMFS proposed the following mitigation measures be implemented for TMC's pile installation and removal activities.

Mitigation Measures

TMC must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant TMC staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel

joining during the project must be trained prior to commencing work;

• Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the application, the Marine Mammal Monitoring Plan, and the IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

• The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

• Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH activity;

• Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 9 are clear of marine mammals. Pile driving and DTH may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

• TMC must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and

• If a marine mammal is observed entering or within the shutdown zones indicated in Table 9, pile driving and DTH must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 9) or 15 minutes have passed without re-detection of the animal (30 minutes for large cetaceans);

• As proposed by the applicant, in water activities will take place only between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less; when the entire shutdown zone and adjacent waters are visible (*e.g.,* monitoring effectiveness in not reduced due to rain, fog, snow, etc.). Pile driving may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

Shutdown Zones

TMC will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment zone for each pile size/type and driving method where applicable, as shown in Table 9.

A minimum shutdown zone of 35 m would be applied for all in-water construction activities if the Level A harassment zone is less than 35 m (*i.e.,* vibratory pile driving). A 10 m shutdown zone would also serve to protect marine mammals from collisions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 9 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented.

TMC would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 1 hour, and NMFS will be notified about species and precautions taken. Pile removal will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 1 hour has passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by TMC or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 9—PROPOSED SHUTDOWN ZONES AND MONITORING ZONES

Activity	Minimum shutdown zone					Harassment zone
	Low-Frequency (LF) Cetaceans	Mid-Frequency (MF) Cetaceans	High-Frequency (HF) Cetaceans	Phocid	Otariid	
Barge movements, pile positioning, etc.[1]	10	10	10	10	10	
Bubble Curtain in use (depths of 60-ft or less)						
36-in steel pile, Vibratory Installation (temporary)	10	10	10	10	10	5,415
36-in steel pile, Vibratory Removal (temporary)	10	10	10	10	10	5,415
36-in steel pile, DTH Installation (temporary)	700	35	825	370	35	6,310
36-in steel pile, Vibratory Installation (permanent)	10	10	10	10	10	5,415

TABLE 9—PROPOSED SHUTDOWN ZONES AND MONITORING ZONES—Continued

Activity	Minimum shutdown zone					Harassment zone
	Low-Frequency (LF) Cetaceans	Mid-Frequency (MF) Cetaceans	High-Frequency (HF) Cetaceans	Phocid	Otariid	
36-in steel pile, Impact Installation (permanent) ...	2,055	80	2,400	1,100	80	635
36-in steel pile, DTH Installation(permanent)	800	35	1,000	430	35	6,310
No Bubble Curtain (depths greater than 60-ft)						
36-in steel pile, Vibratory Installation (temporary)	35	35	35	15	15	11,660
36-in steel pile, Vibratory Removal (temporary)	35	35	35	15	15	11,660
42-in steel pile, Vibratory Installation	35	35	35	15	15	16,345
48-in steel pile, Vibratory Installation	35	35	35	15	15	16,345
42-in steel pile, Impact Installation	6,575	260	7,830	*1,360	260	3,745
48-in steel pile, Impact Installation	5,015	200	5,975	*1,360	200	3,745
36-in steel pile, DTH Installation (temporary)	1,485	70	1,770	795	70	**16,345
42-in steel pile, DTH Installation	1,770	70	2,055	925	70	**16,345
48-in steel pile, DTH Installation	5,050	200	6,015	*1,360	200	**16,345

*For phocids (harbor seals) only, the Level A shutdown zone would be reduced to 1,360 m for impact pile driving of 42- and 48-in piles and DTH drilling of 48-in piles to exclude the Whittier Public Boat Harbor.

**Differs from Table 5 Level B harassment zone for DTH because 39,811 m extends longer than Passage Canal, so land masses would block sound transmission and distances would be truncated. It would also be impractical to monitor this whole zone outside of Passage Canal. Instead, DTH monitoring zone would be the entirety of the Passage Canal and equivalent to the largest Level B harassment zone.

Protected Species Observers

The placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and the remaining Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 10, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Bubble Curtain

A bubble curtain must be employed during all pile installation and removal in depths of 60 ft. or less. The bubble curtain must be deployed in manner guaranteed to distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent mudline contact. No parts of the ring or other objects may prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section, the Monitoring Plan, and this IHA. Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' the following requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;
- TMC must employ up to four PSOs during all pile driving and DTH activities. A minimum of two PSOs (including the lead PSO) must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the Level B harassment zones as possible.
- TMC must establish the following monitoring locations with the best views of monitoring zones as described in the IHA and Marine Mammal Monitoring Plan.
- Two to four PSOs will be onsite during in-water activities associated with the Whittier Head of the Bay Cruise Ship Dock Project, likely stationed in the following locations PSOs would likely be located at Station 1: stationed just to the south of the site on the shore, Station 2: stationed off Depot Road near the freight loading dock, Station 3: stationed along the shoreline northeast of the Emerald Cove Trailhead, and Station 4: stationed on a boat triangulating an area between Emerald Island, the north shore of Passage Canal, southeast towards Gradual Point, and back southwest toward Trinity Point and Emerald Island as shown in Figure 8 of the Marine Mammal Monitoring Plan. All PSOs would have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

TMC shall conduct briefings between construction supervisors and crews, PSOs, TMC staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Acoustic Monitoring

Acoustic monitoring must be conducted in accordance with the Acoustic Monitoring Plan. TMC must conduct hydroacoustic monitoring of two (one 36-in and one 48-in) piles each from different locations during DTH drilling.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory, or DTH) and the total equipment duration for vibratory removal or DTH for each pile or hole or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
  - Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
  - Time of sighting;
  - Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the

composition of the group if there is a mix of species;

○ Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting);

○ Estimated number of animals (min/max/best estimate);

○ Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.);

○ Animal's closest point of approach and estimated time spent within the harassment zone;

○ Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones and shutdown zones; by species;

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any; and

• If visibility degrades to where PSO(s) cannot view the entire harassment zones, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or within the harassment zone are detected by PSOs.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Acoustic Monitoring Plan

The report must include:

• Type and size of pile being driven, substrate type, method of driving during recordings (*e.g.,* hammer model, energy), and total pile driving duration;

• Whether a sound attenuation device is used and, if so, a detailed description of the device and the duration of its use per pile;

• DTH: Number of strikes and strike rate, depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μPa); root mean square sound pressure level (SPLrms), cumulative sound exposure level (SEL_{cum}), peak sound pressure level (SPL_{peak}), and single strike exposure sound level (SEL_{s-s});

• One-third octave band spectrum and power spectral density plot.

• Evaluation of acoustic sound record levels for pile driving activities (DTH).

• Environmental data, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats, etc.)

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, TMC must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 2 for which take could occur, given that NMFS expects the anticipated effects of the proposed pile driving/removal and DTH on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving and DTH activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for humpback whales, killer whales, or Steller sea lion due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species and the rarity of these species near the action area. The potential for harassment would be minimized

through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for two species (Dall's porpoise and harbor seal) as the Level A harassment zones exceed the size of the shutdown zones for specific construction scenarios. Additionally these species could be found more often near the action area and are cryptic in nature. Therefore, there is the possibility that an animal could enter a Level A harassment zone without being detected, and remain within that zone for a duration long enough to incur PTS. Level A harassment of these species is proposed to be conservative. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for both marine mammal stocks and species. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The Level A harassment zones identified in Table 6 are based upon an animal exposed to pile driving or DTH up to four piles per day. Given the short duration to impact drive or vibratory install or extract, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely give marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removals, and DTH at the sites in the Passage Canal are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH would occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporary present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

For all species, there are no known Biologically Important Areas (BIAs) near the project area that would be impacted by TMC's planned activities. While southcentral Alaska is considered an important area for feeding humpback whales between March and May (Ellison *et al.,* 2012), it is not currently designated as critical habitat for humpback whales (86 FR 21082; April 21, 2021).

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- Authorized Level A harassment would be very small amounts and of low degree;
- Level A harassment takes of only Dall's porpoise and harbor seals;
- For all species, the Passage Canal is a very small and peripheral part of their range;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- TMC would implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS;

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation

measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than five percent of the abundance of the affected stocks, see Table 7). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

The most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals however this number just accounts for a portion of the stock's range. Therefore, the 45 takes of this stock proposed for authorization is believed to be an even smaller portion of the overall stock abundance.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The Alutiiq and Eyak people of Prince William Sound traditionally harvested marine mammals, however the last recorded harvest of marine mammals in Whittier was in 1990, where it was reported that 7 marine mammals were harvested (ADF&G 2022b). Other Prince William Sound coastal communities such as Cordova, Chenega, and Tatitlek report recent subsistence harvest or use of marine mammals. Harvest of harbor seals and Steller sea lions was reported in Tatitlek in 2014, the latest year for which data is available from ADF&G's Community Subsistence Information System (ADF&G 2022b).

Subsistence hunters in Prince William Sound report having to travel farther from their home communities to be successful when harvesting marine mammals (Keating et al. 2020). However, their range was not reported to extend into Passage Canal, as all three communities are located at least 60 miles away by boat (Fall and Zimpelman 2016).

The proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because:

- there is no recent recorded subsistence harvest of marine mammals in the area;
- construction activities are localized and temporary;
- mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,
- the project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from TMC's proposed activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

NMFS is proposing to authorize take of Western US Steller Sea Lion, Western North Pacific Humpback whale, and the California/Oregon/Washington Humpback whale, which are listed under the ESA.

The Permits and Conservation Division has requested initiation of section 7 consultation with the Alaska Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to TMC for conducting Whittier head of the Bay Cruise Ship Dock project in Whittier, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities#active-authorizations.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of

Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 8, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC673]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from February 7, 2023 through January 31, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Shell plans to conduct a 3D borehole seismic survey using an airgun array as the sound source, covering portions of approximately 30 lease blocks centered around Lease Block G07962 (Mississippi Canyon 806). The survey is a type of vertical seismic profile (VSP) survey. The array consists of 32 elements, with a total volume of 5,110 cubic inches

(in^3). Please see Shell's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone); [1] (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of VSP survey effort. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern.

The planned 3D borehole VSP survey will involve one source vessel sailing a racetrack pattern along survey lines approximately 100 m apart and 15 km in length. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Shell is not proposing to perform a survey using the coil geometry, its planned VSP survey is expected to cover approximately 53 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Shell in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72 element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in both the airgun array (32 elements, 5,110 in^3) and the daily survey area planned by Shell (53 km^2), as compared to those modeled for the rule.

The survey is planned to occur for 14 days in Zone 5, with airguns being used on 10 of the days. The season is defined as winter; however, the LOA is valid for 1 year meaning that the survey could take place in any season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Shell's planned activities will occur in water depths of approximately 840–1,207 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013;

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

www.boem.gov/gommapps). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403, January 19, 2021). In this case, use of the acoustic exposure modeling produces an estimate of four killer whale exposures. Given the foregoing, it is unlikely that any killer whales would be encountered during this 10-day survey, and accordingly no take of killer whales is authorized through this LOA.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	263	2,207	11.9
Kogia spp.	[3] 99	4,373	2.3
Beaked whales	1,161	3,768	30.8
Rough-toothed dolphin	200	4,853	4.1
Bottlenose dolphin	946	176,108	0.5
Clymene dolphin	562	11,895	4.7
Atlantic spotted dolphin	378	74,785	0.5
Pantropical spotted dolphin	2,549	102,361	2.5
Spinner dolphin	683	25,114	2.7
Striped dolphin	219	5,229	4.2
Fraser's dolphin	[4] 65	1,665	3.9
Risso's dolphin	165	3,764	4.4

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take [1]	Abundance [2]	Percent abundance
Melon-headed whale	369	7,003	5.3
Pygmy killer whale	87	2,126	4.1
False killer whale	138	3,204	4.3
Killer whale	0	267	n/a
Short-finned pilot whale	107	1,981	5.4

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] Includes 5 takes by Level A harassment and 94 takes by Level B harassment.
[4] Modeled take of 63 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: February 7, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02960 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 14, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov*. Please reference OMB Control Number 0648–0364 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dr. Marisa Trego, Atlantic Large Whale Take Reduction Team Coordinator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01970, (978) 282–8484, *marisa.trego@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. In 1996, pursuant to section 118 of the MMPA, the National Marine Fisheries Service (NMFS) established and convened an Atlantic Large Whale Take Reduction Team (Team) to assist in the development of the Atlantic Large Whale Take Reduction Plan (Plan). Throughout this process, the Team has provided NMFS with recommended measures designed to reduce mortality and serious injury to North Atlantic right (Eubalaena glacialis), humpback (Megaptera novaeangliae), minke (Balaenoptera acutorostrata), and fin (Balaenoptera physalus) whales from incidental interactions with commercial fishing gear. To gather information on where entanglements are occurring and what type of gear is involved, the Team developed gear marking requirements. As a result, any person setting trap/pot or gillnet gear to fish commercially in some areas of the Atlantic Ocean are required to paint or otherwise mark their gear with specific color codes, designating the type of gear and area where it is set, in addition to specific buoy marking requirements.

NMFS is continuing the gear marking regulations amended in the 2021 rule for the Northeast Region Trap/Pot Management Area (northeast region) commercial trap/pot fisheries because increased gear marking continues to be necessary to improve our understanding of where entanglement incidents occur (RIN 648–BJ09). The gear modifications required by the rule became effective May 1, 2022, which is at the start of the American lobster/Jonah crab fishing year.

The continuation of this data collection allows for improved information on entanglement origins that will further enable NMFS to reduce injuries and deaths of large whales, especially North Atlantic right whales, due to incidental entanglement in United States commercial fishing gear. In order to develop fair and effective management measures, the Team requires comprehensive data on when, where, and how fixed gear vessels fish, and where whales become entangled in fishing gear.

The 2021 rule modified gear marking requirements by establishing a state-specific color for Maine (purple), New Hampshire (yellow), Massachusetts (red), and Rhode Island (silver/gray) on buoy lines used in the lobster and Jonah crab trap/pot fishery, except those fishing in LMA 3 which retains black as the primary gear mark color. For ropeless fishing operations working under EFPs or state authorizations, gear

marking is likely to be recommended as a permit condition for any stored buoy line that is retrieved remotely, and that unique color combination is anticipated to be defined in future rule making. All lobster and Jonah crab trap/pot vessels in the Northeast Region are required to include a 3-foot (0.9-meter (m)) solid mark within the surface system using paint or tape, at least three 1-foot state specific marks (in the top, middle and bottom of the buoy line), and at least four 1-foot (0.3-m) green marks (no marking convention defined; tape, paint, twine, etc.) within 6 inches (15.24 centimeters (cm)) of each area-specific gear mark to distinguish state from Federal waters or, in the case of LMA 3 vessels, to distinguish Northeast Region vessels from vessels fishing in the southern and western LMA 3 waters. Gear marks are all required to be 1-foot (0.3-m) long or greater when installed to distinguish them from Canadian marks, which currently are required to be at least 6 inches (15.24 cm) in length. The term ''state'' refers to the state associated with the vessel's principal port as declared on state and Federal permits. A principal port is considered the city and state where the majority of landings occur. Although more than 90 percent of lobster and Jonah crab Federal permit holders identify the same state as their principal port, mailing address, and home port (city and state where a vessel is moored), the port of landing was selected based on recommendations from some state managers, and is considered to be the area where fishing occurs.

The only changes to this collection since the 2021 submission were to update material and labor costs based on current data.

II. Method of Collection

Information collected is in the form of gear marking.

III. Data

OMB Control Number: 0648–0364.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Primary respondents are business or other for-profit organizations (fishermen), and individuals or households.

Estimated Number of Respondents: 3,970.

Estimated Time per Response: The time to mark each line varies on the number of marks required by area, but it is estimated that each mark takes between 6.7–8.6 minutes.

Estimated Total Annual Burden Hours: The estimated total annual burden is between 43.2–56.0 hours per year, per vessel. For all 3,970 vessels, the total burden hours is between 171,367–222,391 hours.

Estimated Total Annual Cost to Public: The estimated cost is $25.66-$74.34 per vessel per year. For all 3,970 vessels, the estimated total annual cost is between $101,870-$295,130.

Respondent's Obligation: Mandatory.

Legal Authority: Marine Mammal Protection Act and Endangered Species Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02926 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Antarctic Marine Living Resources Conservation and Management Measures

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 14, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0194 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to MiAe Kim, Office of International Affairs, Trade, and Commerce, 1315 East-West Hwy, Silver Spring, MD, 20910; (301) 427–8365, *mi.ae.kim@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of International Affairs, Trade, and Commerce of the National Marine Fisheries Service requests renewal of an existing information collection.

The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) for the purpose of protecting and conserving the marine living resources in the waters surrounding Antarctica. The Convention is based

upon an ecosystem approach to the conservation of marine living resources and incorporates standards designed to ensure the conservation of individual populations and species and the Antarctic marine ecosystem as a whole.

The United States (U.S.) is a contracting party to the Convention and a member of CCAMLR and the Scientific Committee established by the Convention.

On November 8, 1984, the President signed Public Law 98–623, the Antarctic Marine Living Resources Convention Act (the Act). The Act directs and authorizes the United States to take actions necessary to meet its treaty obligations as a contracting party to the Convention. The regulations implementing the Act are at 50 CFR part 300, subpart G. The record keeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. The reporting requirements included in this collection concern CCAMLR Ecosystem Monitoring Program (CEMP) activities, scientific research in the Convention area, U.S. vessel permit applicants and/or harvesting vessel operators, and U.S. importers, exporters, and re-exporters of AMLR.

U.S. regulations require U.S. individuals engaged in AMLR harvesting, transshipping, and importing or entering and/or conducting activities in a CEMP site to apply for and hold a permit for such activities. Individuals involved in certain scientific research in the Convention area are required to report information.

Members of CCAMLR are required to provide, in the manner and at such intervals as may be prescribed, information about harvesting activities, including fishing areas and vessels, so as to enable reliable catch and effort statistics to be compiled.

As part of U.S. obligations to monitor and control the import, export, and re-export of Antarctic marine living resources, NOAA requires dealers to submit applications for pre-approval certifications of imports of frozen Patagonian and Antarctic toothfish (also referred to as Chilean sea bass) and applications for re-exports of these species.

The collection is necessary in order for the United States to meet its treaty obligations as a contracting party to the Convention.

II. Method of Collection

On-line or paper applications, electronic reports, satellite-linked vessel monitoring devices, radio and telephone calls, gear and vessel markings are required from participants and methods of transmittal include internet, satellite, facsimile and mail transmission of forms, reports and information.

III. Data

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection, revision.

Affected Public: Individuals; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 80.

Estimated Time per Response: One hour to apply for a CEMP research permit; 1 hour to report on research; 28 hours to supply information on potential new or exploratory fishing; 2 hours to apply for a harvesting permit; 2 minutes to transmit information by radio; 4 hours to install a vessel monitoring device (VMS); 2 hours for annual VMS maintenance; 5 minutes to complete a VMS activation checklist; 45 minutes to mark a vessel; 40 minutes to mark buoys; 10 hours to mark pot gear; 6 minutes to mark trawl nets; 15 minutes to provide notice of transshipment within the Convention Area; 5 minutes for an Observer notification call; 15 minutes to apply for a permit to be a first receiver of Antarctic marine living resources; 15 minutes to complete and submit a toothfish catch document; 15 minutes to apply for pre-approval of toothfish imports; 15 minutes to complete a fresh toothfish reporting form; 15 minutes to complete and submit re-export catch documents; 15 minutes to submit import tickets.

Estimated Total Annual Burden Hours: 365 hours.

Estimated Total Annual Cost to Public: $135,850.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Antarctic Marine Living Resources Convention Act, 16 U.S.C. 2431 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02932 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC753]

Marine Mammals; File No. 27049

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Cristy Gonzalez Barrientos, DVM, Texas A&M University, TVMDL, 2711 Wilderness Drive North, College Station, TX 77845, has applied in due form for a permit to import, export, and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before March 15, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27049 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please

include File No. 27049 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. or Courtney Smith, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a 5-year permit to study Brucellosis in cetaceans. Parts may be received, imported, and exported from up to 500 individual cetaceans that stranded or are in rehabilitation in Costa Rica, annually. The applicant may also import and export lung nematodes, which may contain cetacean DNA, collected from up to 500 stranded cetaceans in Costa Rica, annually. In addition, parts previously imported from Costa Rica under a separate permit from 34 striped dolphins (*Stenella coeruleoalba*), one long-beaked common dolphin (*Delphinus capensis*), and one dwarf sperm whale (*Kogia sima*) would be transferred to this permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 7, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03036 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Type-Approval Requirements for Vessel Monitoring Systems (VMS)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 14, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0789 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to NOAA, Kelly Spalding, National VMS Program Manager, 1315 East West Hwy., Bldg. SSMC3, Rm. 3207, Silver Spring, MD 20910, 301–427–2300, *kelly.spalding@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The current Code of Federal Regulations (CFR) at title 50, part 600, subpart Q, sets forth the requirements for Enhanced Mobile Transceiver Units (EMTUs) to be type-approved by NMFS for use in federal fisheries programs. These EMTUs can either be satellite-linked systems or cellular-based hardware and software. Respondents for type-approval of vessel monitoring system (VMS) satellite- or cellular-based systems must submit a written type-approval request and electronic copies of supporting materials that include certain required information. The National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) uses the information submitted to assess whether an EMTU or EMTU–C meets minimum technical specifications and can be approved for use in the NMFS VMS program. The information currently required to accompany an application for type-approval of VMS satellite-based systems is set forth at 50 CFR 600.1502 through 600.1507. The information required for type-approval of VMS cellular-based systems will be substantially similar and identical except where specifically indicated (*e.g.,* EMTU-Cs will not be required to report the at-sea loss of communications signals, as proposed in 50 CFR 600.1503(e)(5)).

Information requested in the type-approval application for EMTU-Cs and EMTUs includes the information identified in 50 CFR 600, subpart Q, more specifically, 50 CFR 600.1501 through 600.1509. This identified information is also embodied in the Type-Approval Matrix form (available from NMFS OLE) that can be used by a respondent to more easily organize and submit the required information in their type-approval request to NMFS. The information will include information regarding: Characteristics of the EMTU–C or EMTU, Associated entities including manufacturer and sellers, Communication functionalities, Data formats, Data transmission details, Latency requirements, Messaging formats and transmission details, Electronic forms, Data security, Customer service, Durability, and Applicant's data handling requirements.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: 0648–0789.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time per Response: Completion of an initial application: 80 hours. Changes to an existing type-approval: 8 hours. Response to a type-approval revocation: 24 hours. Diagnostic and troubleshooting support (as per type-approval): 166 hours.

Estimated Total Annual Burden Hours: 9,458 hours.

Estimated Total Annual Cost to Public: $5,200.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the National Marine Fisheries Service (NMFS) and regional fishery management councils prevent overfishing and requires the collection of reliable data essential to the effective conservation, management, and scientific understanding of the nation's fishery resources, including vessel monitoring systems.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–02975 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC738]

Marine Mammals; File No. 22187

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Heather E. Liwanag, Ph.D., 1 Grand Avenue, San Luis Obispo, CA 93407–0401, has applied for an amendment to Scientific Research Permit No. 22187–03.

DATES: Written, telefaxed, or email comments must be received on or before March 15, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 22187 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 22187 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Shasta McClenahan, Ph.D., (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 22187–03 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 22187–03, issued on April 1, 2022, authorizes the permit holder to conduct research to establish a catalog of northern elephant seals (*Mirounga angustirostris*) in California, primarily at Piedras Blancas and near Vandenberg Space Force Base. Types of authorized takes include behavioral observations, measurements, external instrumentation, bioacoustic recordings, acoustic playbacks, marking, flipper tagging, capture, and non-invasive physiological sampling. The permit holder is requesting the permit be amended to add the Channel Islands in California as a research location due to the inability to conduct tagging studies at Piedras Blancas. The applicant also proposes to deploy an additional satellite tag model and requests to pull one whisker per seal handled. The applicant also seeks to increase the number of harbor seals (*Phoca vitulina*) that may be unintentionally harassed from 300 to 450 annually due to the change in location. The permit would remain valid until March 31, 2024.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 8, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03006 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC708]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued

to CGG Inc. (CGG) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from February 8, 2023 through November 30, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

CGG plans to conduct a seismic survey with a proprietary test acquisition using an airgun as the sound source, covering portions of approximately 21 lease blocks. The airgun array consists of 9 elements, with a total volume of 1,650 cubic inches (in^3). Please see CGG's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by CGG in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone); [1] (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

The survey proposed by CGG was not included in the modeled survey types, however, use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of survey effort. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern.

The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although CGG is not proposing to perform a survey using the coil geometry, its planned survey is expected to cover approximately 4 km^2 per day, meaning that the coil proxy is most representative of the effort planned by CGG in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72 element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in both the airgun array (9 elements, 1,650 in^3) and the daily survey area planned by CGG (4 km^2), as compared to those modeled for the rule.

The survey is planned to occur for 10 days in Zone 6, with airguns being used on 3 of the days. The season is defined as winter, however the period of effectiveness for the LOA covers both seasons, meaning that the survey could take place in any season. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. CGG's planned activities will occur in water depths of approximately 300–1,000 m in the central GOM. Although there is limited overlap of the survey depths with potential Rice's whale habitat, due to the brief survey duration, as well as a much smaller airgun array and daily survey area planned compared to the model used to calculate possible take, the potential for exposure of this rare species is unlikely. Thus, although use of the acoustic exposure modeling produces an estimate of one Rice's whale exposure, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale).[4] However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water (>700 m). This survey would take place, in part, in deep waters that would overlap with the depths that the GOM killer whales typically occur. However, due to the short duration of the survey and the relatively small geographic area it will cover in relation to suitable deep water habitat for killer whales, it is unlikely that killer whales would be encountered. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403, January 19, 2021). In this case, use of the acoustic exposure modeling produces an estimate of one killer whale exposure. Given the foregoing, it is unlikely that even one killer whale would be encountered during the 3-day seismic portion of the survey, and accordingly no take of killer whales is authorized through this LOA.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	n/a
Sperm whale	72	2,207	3.28
Kogia spp	[3] 16	4,373	0.37
Beaked whales	273	3,768	7.23
Rough-toothed dolphin	52	4,853	1.06
Bottlenose dolphin	152	176,108	0.09
Clymene dolphin	197	11,895	1.66
Atlantic spotted dolphin	63	74,785	0.08
Pantropical spotted dolphin	456	102,361	0.45
Spinner dolphin	[4] 0	25,114	n/a
Striped dolphin	51	5,229	0.97
Fraser's dolphin	[5] 0	1,665	n/a
Risso's dolphin	38	3,764	1.00
Melon-headed whale	[6] 100	7,003	1.43
Pygmy killer whale	23	2,126	1.08
False killer whale	38	3,204	1.19
Killer whale	0	267	n/a
Short-finned pilot whale	57	1,981	1.90

[1] Scalar ratios were not applied in this case due to brief survey duration.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 1 takes by Level A harassment and 15 takes by Level B harassment.

[4] Modeled take of 11 decreased to 0. For spinner dolphin, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.,* estimated exposure value of 11, relative to assumed average group size of 152) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the very short survey duration and small estimated exposure value NMFS has determined that is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

[5] Modeled take of 18 decreased to 0. For Fraser's dolphin, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.,* estimated exposure value of 18, relative to assumed average group size of 65) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the very short survey duration and small estimated exposure value NMFS has determined that is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

[6] Modeled take of 98 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of CGG's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will

be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to CGG authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: February 8, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03037 Filed 2–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Development of Innovative Technology Tools or Approaches To Improve Outcomes for Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for Development of Innovative Technology Tools or Approaches to Improve Outcomes for Individuals with Disabilities, Assistance Listing Number 84.327R. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES: *Applications Available:* February 13, 2023.

Deadline for Transmittal of Applications: April 14, 2023.

Deadline for Intergovernmental Review: June 13, 2023.

Pre-Application Webinar Information: No later than February 21, 2023, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: *For Absolute Priority 1:* Rebecca Sheffield, U.S. Department of Education, 400 Maryland Avenue SW, Room 5040E, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6725. Email: *Rebecca.Sheffield@ed.gov.*

For Absolute Priority 2: Tina Diamond, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6723. Email: *Christina.Diamond@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Educational Technology, Media, and Materials for Individuals with Disabilities program (ETechM2 Program) is to improve results for children with disabilities by (1) promoting the development, demonstration, and use of technology; (2) supporting educational activities designed to be of educational value in the classroom for children with disabilities; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials to children with disabilities in a timely manner.

Priorities: This competition includes two absolute priorities. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priorities are from allowable activities specified in sections 674(b)(2) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(b)(2) and 1481(d).

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet either Absolute Priority 1 or Absolute Priority 2. The Department intends to fund at least one project under each absolute priority. Applicants may apply under both absolute priorities but must submit separate applications. Applicants must clearly identify if the proposed project addresses Absolute Priority 1 or Absolute Priority 2.

These priorities are:

Absolute Priority 1: Supporting Technology-Based Approaches to Transition Experiences for Secondary Students with Sensory Disabilities.[1]

Background:

Transition goals and objectives that address transition services requirements must be in effect as part of the individualized education program (IEP) required under IDEA when a student turns 16 years old, or younger if deemed appropriate by the IEP Team or if required by State law. Despite advances in technology, transition-related experiences for secondary students with disabilities have predominantly entailed in-person, community experiences consisting of volunteer or paid work. This in-person approach can limit students' transition experiences to options only available in their local communities. Furthermore, in most educational settings, students with disabilities are instructed using strategies that rely on sensory inputs such as observation and listening. For example, information about career options, college expectations, social norms, occupation-specific vocabulary, interviewing strategies, and other transition skills are often taught through job site visits and presentations utilizing video/audio content that is not accessible to students with sensory disabilities. Transition planning that includes the use of technology-based approaches can help overcome these limitations, by creating accessible opportunities for students with sensory disabilities to receive mentoring and pre-employment and pre-college experiences, and to engage in vocational training programs beyond their community and still be supported by qualified teachers who employ accommodations, specialized instruction, and other services available under IDEA and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act

[1] Sensory disabilities include deafness, hearing impairment, visual impairment including blindness, or deaf-blindness, as defined in 34 CFR 300.8(b)(2).

(WIOA), 29 U.S.C. 3101 *et seq.* (Low, 2020).

Research supports the use of technology for virtual and in-person instruction to increase accessibility and enable greater independence for all students with disabilities. The Education Access Board reported evidence that virtual internships in areas individualized to students' career interests improved career readiness for all students, especially students in rural and remote areas who may have limited access to transportation, professional networks, and high-demand career fields (Richards, 2020). Technology can be leveraged to extend the range of college and career opportunities open to students with sensory disabilities by providing the platform for these students to engage in virtual mentoring, virtual pre-employment and pre-college experiences, and virtual vocational training. These virtual transition experiences can decrease the reliance on in-person, community-based opportunities, remove transportation barriers experienced by students with sensory disabilities who are unable to drive or who lack access to public transportation and open a range of innovative, virtual experiences individualized to their career or college interests (Richards, 2020; Maurer, 2021).

Unfortunately, students with sensory disabilities, particularly those living in rural and remote areas, often face transportation, accessibility, networking, and communication barriers to career awareness and pre-employment experiences. Many adjustments to in-person activities and after-school and summer programs that were made in response to the COVID–19 pandemic have continued to reshape school programs and culture (*e.g.,* hybrid learning opportunities, remote service delivery, computer-based textbooks and instructional materials). At times, these changes have resulted in additional barriers and fewer or delayed opportunities for hands-on engagement in transition experiences (Iowa's Area Education Agencies, 2020; Michigan Bureau of Services for Blind Persons, 2020; Vermont Agency of Education, 2020). Simultaneously, schools and programs are increasingly implementing digitally enhanced, virtual, and hybrid alternatives and additions to in-person programming, which may or may not be accessible to students with disabilities (Greenhow et. al, 2022).

Projects funded under this priority will incorporate innovative approaches for delivering technology-based transition services including instruction, mentoring, pre-employment transition services, and the continuum of work-based learning opportunities, from ''career exposure'' to ''career experience'' for secondary students with sensory disabilities (Altstadt et al., 2020).

Priority:

The purpose of this priority is to fund projects to establish and operate evidence-based [2] transition experience programs that integrate accessible technology-based tools and approaches to support secondary students with sensory disabilities.[3]

The projects must achieve, at a minimum, the following expected outcomes:

(a) Increased accessibility and participation for secondary students with sensory disabilities in pre-vocational experiences (*e.g.,* internships, early work experiences, apprenticeships) and early college experiences, especially in rural and remote [4] areas.

(b) Increased capacity of schools and State vocational rehabilitation agencies to provide transition services (*e.g.,* career awareness programming, transition programming, skills training, benefits counseling) for secondary students with sensory disabilities.

(c) Increased collaboration among families, schools, employers, vocational rehabilitation agencies, and community colleges and universities to support successful implementation of transition goals and objectives for secondary students with disabilities.

(d) Increased inclusion of students in grades 6 through 9 with sensory disabilities in accessible, impactful early career awareness and job skill-building experiences.

(e) Increased acquisition of college and career-related self-determination, social and emotional, and assistive technology competencies by secondary students with sensory disabilities.

(f) Increased numbers of secondary students with sensory disabilities earning college credits or completing vocational training courses while still in high school.

In addition to these programmatic requirements, to be considered for funding under this absolute priority, applicants must meet the application and administrative requirements in this priority.

Application Requirements:

(a) Describe, in the narrative section of the application under ''Significance,'' how the proposed project will address the need in the field for transition programs that support technology-based connections to pre-vocational learning experiences, mentoring, and pre-college experiences for secondary students with sensory disabilities. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational and policy issues and national initiatives relating to post-secondary transition for students with sensory disabilities, including issues relevant to transition for secondary students in rural and remote areas;

(ii) Demonstrate knowledge of existing and emerging evidence-based practices (EBPs) in technology-based approaches to transition for secondary students with disabilities, including practices to promote college and career-related self-determination, social and emotional, and assistive technology competencies;

(iii) Demonstrate knowledge of the supports that are needed to build State educational agency (SEA) and local educational agency (LEA) capacity to provide technology-based connections to engage secondary students with sensory disabilities in pre-vocational learning experiences, mentoring, and pre-college experiences (*e.g.,* professional development, coaching, interagency and family collaboration);

(iv) Demonstrate knowledge of strategies that can be implemented with students in grades 6 through 9 to promote early engagement in transition activities;

(v) Demonstrate knowledge of EBPs for transition programming that leads to college credit and vocational training qualifications for students still in high school; and

(vi) Address each of the selection criteria for this section.

(b) Demonstrate, in the narrative section of the application under ''Quality of project design and services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have

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[2] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[3] For the purposes of this priority, ''secondary students with sensory disabilities'' means students in schools and school-sponsored programs offering curriculum for grades 6, 7, 8, 9, 10, 11, or 12, and youth in extended transition programs beyond 12th grade served under IDEA, who have one or more of the following disabilities: deafness, hearing impairment, visual impairment including blindness, or deaf-blindness, as defined in 34 CFR 300.8(b)(2).

[4] For the purposes of this priority, ''rural and remote'' areas are school districts and service delivery areas within one of the U.S. territories, freely associated States, or outlying areas or within a reservation, or which are school districts whose locale type is classified as rural according to 2019 or 2020 data from the National Center for Education Statistics locale classifications. See *https://nces.ed.gov/programs/maped/LocaleLookup/.*

traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the transition-related needs of the target population (students with sensory disabilities or a subpopulation thereof); and

(ii) Ensure that the technology-based connections to pre-vocational experiences, mentoring, and pre-college experiences meet the needs of the target population;

(2) Utilize and refine a design process that moves the proposed technology-based connections to pre-vocational experiences, mentoring, and pre-college experiences from idea to implementation;

(3) Develop and refine the vision, plan, and program incorporating technology-based connections to pre-vocational experiences, mentoring, and pre-college experiences to achieve the intended project outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

Note: The following websites provide more information on logic models: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(iii) Criteria and strategies for selecting and recruiting implementation sites. Applicants are encouraged to choose sites from a variety of settings (*e.g.,* urban, Tribal, rural, suburban) and populations (*e.g.,* communities with high concentrations of students receiving free or reduced-price lunch), recognizing that due to the low incidence of sensory disabilities, a ''site'' may need to incorporate multiple school campuses, LEAs, or regions, within one State or across multiple States. Each project must include at least three sites, with at least one of the three sites having at least 50 percent of students living in rural or remote settings;

Note: Applicants are encouraged to identify, to the extent possible, the sites willing to participate in the applicant's project. Final site selection will be determined in consultation with the Office of Special Education Programs (OSEP) project officer.

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe how the proposed project will incorporate current research and practices in the development of the technology-based connections to pre-vocational experiences, mentoring, and pre-college experiences;

(5) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and broader use of the technology-based connections to pre-vocational experiences, mentoring, and pre-college experiences. This plan must include:

(i) Strategies for the grantee to develop a manual, toolkit, and other resources for disseminating information on the program by the end of the grant period; and

(ii) Strategies for the grantee to assist State and local agencies (*e.g.,* SEAs, LEAs, and vocational rehabilitation agencies), schools and other partners within or across States to scale up the program and its components; and

(6) Address each of the selection criteria for this section.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(3) of this notice;

(2) Describe how project outcomes will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR);

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan, as well as the costs associated with the implementation of the evaluation; and

(6) Address each of the selection criteria for this section.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits; and

(5) The proposed project will address each of the selection criteria for this section.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients;

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation; and

(5) The proposed project will address each of the selection criteria for this section.

(f) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(g) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period;

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, or virtually, occurring twice during the project period; and

Note: The project must reallocate unused travel funds no later than the end of the third quarter of each budget period if the three-day project director's conference is conducted virtually.

(iii) Four travel days spread across years two through four of the project period to attend planning meetings, Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(h) If proposed, maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility and includes relevant information about the project's annual progress toward meeting project outcomes; and

(i) Include, in Appendix A, an assurance to assist OSEP with the transfer and dissemination of pertinent resources and products at the end of this award period, as appropriate.

Note: Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References:

Altstadt, D., Barrett, L., Cahill, C., Cuevas, E., & Maag, T. (2020). *Expanding high-quality work-based learning.* Education Commission of the States. *www.ecs.org/expanding-high-quality-work-based-learning/.*

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Richards, R. (2020, May 14). *How virtual internships can improve career readiness for all students: Lessons from a rural school district.* EAB. *https://eab.com/insights/blogs/district-leadership/virtual-internships-career-readiness/.*

Vermont Agency of Education. (2020). *Implementing transition services during remote learning. https://education.vermont.gov/sites/aoe/files/documents/edu-implementing-transition-services-during-remote-learning.pdf.*

Absolute Priority 2: Field-Initiated Projects to Develop Innovative Technology for Individuals with Disabilities.

Background:

The IDEA emphasizes the importance of linking research and practice to improve educational results for individuals with disabilities. Over the past 45 years, OSEP has supported technology development, demonstration, and utilization within special education to (1) improve transfer of technology from research to practice; (2) increase accessibility of technology to the broadest range of individuals with disabilities; (3) demonstrate the use of technology to parents and educators; and (4) expand the use of technology to support communication and educational engagement for students with the most significant cognitive disabilities. Projects implemented over the years have addressed a variety of topics and target audiences but have all focused on the use of technology to maximize the academic, social, and functional skills of individuals with disabilities and improve their access to evidence-based [5] learning experiences.

The rapid pace of technology innovation coupled with increased understanding of best practices in instructional design, cognitive science, and brain research has resulted in a need for continuous development of innovative technology to support all learners, including those with disabilities. The design and development of innovative technology must be accessible to and usable by the full range of learners, including by children and students with disabilities and their families, and grounded in effective learning principles (Bransford et al., 2000; Pashler et al., 2007; Graesser et al., 2011). For example, there is promising evidence that supports the use of gaming, simulation, and additional technologies to heighten learning experiences, increase opportunity to respond or practice, and support student exploration; however, these innovations are frequently not accessible to individuals with disabilities (Kaplan, 2022). To increase equity in access to technology and solve persistent problems experienced by individuals with disabilities, OSEP will fund field-initiated projects to develop innovative technology for individuals with disabilities that are consistent with the Secretary's Supplemental Priorities, which were published in the **Federal Register** on December 10, 2021 (86 FR 70612).

Priority:

The purpose of this priority is to fund field-initiated projects to develop accessible innovative technology to increase outcomes for individuals with disabilities receiving early intervention under Part C of IDEA or special education under Part B of IDEA, including those with the highest support needs. The purpose of field-initiated projects is to develop innovative technology (*e.g.,* devices, programs, tools, applications, systems, approaches, or intervention protocols) based on evidence that the technology would be beneficial to the target population.

To be considered for this grant opportunity, applicants must propose projects to develop innovative technology to accomplish at least one of the following outcomes:

(a) Increased student-centered learning approaches that leverage technology to address learner variability (*e.g.,* universal design for learning, K–12 competency-based education, project-based learning, or hybrid/blended learning) and increased provision of high-quality learning content, applications, or tools that take into account race, ethnicity, culture, language, and disability to address students' social, emotional, mental health, or academic needs.

(b) Increased engagement for individuals with disabilities and, where appropriate, families of individuals with

[5] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

disabilities in educational, functional, or supplemental activities that extend learning time or increase independence.

(c) Increased use of technology to enable evidence-based approaches to personalized learning for students with disabilities in the classroom or support supplemental activities that extend learning time and increase student and, where appropriate, parent engagement.

(d) Increased use of technology to expand the number and proportion of underserved students with disabilities who enroll in postsecondary readiness education programs, which may include strategies related to college or technical school preparation, awareness, application, selection, advising, counseling, and enrollment.

To be considered for funding under this absolute priority, applicants must meet the requirements contained in this priority.

Application Requirements:

(a) Describe, in the narrative section of the application under ''Significance,'' how the innovative technology proposed for development by the project will—

(1) Accomplish at least one of the required outcomes;

(2) Maximize the academic, social, and functional skills of individuals with disabilities and improve their access to evidence-based learning experiences; and

(3) Address each of the selection criteria for this section.

(b) Demonstrate, in the narrative section of the application under ''Quality of project design and services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the target population; and

(ii) Ensure that the innovative technology proposed for development will meet the needs of the target population;

(2) Utilize and refine a design process that moves the innovative technology from idea to implementation;

(3) Develop and refine the vision, plan, and innovation to achieve the intended project outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

Note: The following websites provide more information on logic models: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe how the proposed project will incorporate current research and practices in the development of the innovative technology;

(5) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the innovative technology; and

(6) Address each of the selection criteria for this section.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(3) of this notice;

(2) Describe how project outcomes will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR);

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan, as well as the costs associated with the implementation of the evaluation; and

(6) Address each of the selection criteria for this section.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits; and

(5) The proposed project will address each of the selection criteria for this section.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients;

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation; and

(5) The proposed project will address each of the selection criteria for this section.

(f) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(g) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or

virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period;

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A three-day project directors' conference in Washington, DC, or virtually, occurring twice during the project period; and

Note: The project must reallocate unused travel funds no later than the end of the third quarter of each budget period if the conference is conducted virtually.

(iii) Four travel days spread across years two through four of the project period to attend planning meetings, Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(h) If proposed, maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility and includes relevant information about the project's annual progress toward meeting project outcomes; and

(i) Include, in Appendix A, an assurance to assist OSEP with the transfer and dissemination of pertinent resources and products at the end of this award period, as appropriate.

Note: Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References:

Bransford, J. D., Brown, A. L., & Cocking, R. R. (Eds.). (2000). How people learn: Brain, mind, experience, and school. National Academy Press.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $2,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of unfunded applications from this competition.

Estimated Range of Awards: $450,000 to $500,000 per year.

Estimated Average Size of Awards: $475,000 per year.

Maximum Award: We will not make an award exceeding $500,000 for a single budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: institutions of higher education, nonprofit organizations suitable to carry out the activities proposed in the application, and other public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority addressed by their project, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-*

department-of-education-discretionary-grant-programs, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies; and

(iv) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project design and services (30 points).*

(1) The Secretary considers the quality of the design and services to be provided by the proposed project.

(2) In determining the quality of the design and services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The likely impact of the services to be provided by the proposed project on the intended recipients of those services; and

(v) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

(d) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(iv) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must

have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the ETechM2 Program. These measures are:

- *Program Performance Measure 1:* The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- *Program Performance Measure 2:* The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 3:* The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 4.1:* The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.
- *Program Performance Measure 4.2:* The Federal cost per unit of accessible educational materials from the National Instructional Materials Access Center funded by the ETechM2 Program.
- *Program Performance Measure 4.3:* The Federal cost per unit of video description funded by the ETechM2 Program.

Program Performance Measures 1, 2, and 3 apply to projects funded under this competition, and grantees are required to submit data on Program Performance Measures 1, 2, and 3 as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and will be required upon request to report additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–02987 Filed 2–10–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0017]

Agency Information Collection Activities; Comment Request; Grant Application Form for Project Objectives and Performance Measures Information

AGENCY: Office of the Secretary (OS), 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 April 14, 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–0027. 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 Cleveland Knight, 202–987–0064.

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: Grant Application Form for Project Objectives and Performance Measures Information.

OMB Control Number: 1894–0017.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 8,800.

Total Estimated Number of Annual Burden Hours: 44,000.

Abstract: The U.S. Department of Education Grant Application Form for Project Objectives and Performance Measures Information serves as a precursor to the U.S. Department of Education Grant Performance Report Form (ED 524 B) in which project objectives, measures, and targets will be entered by applicants at the time that grant applications are entered in *Grants.gov*.

The Grant Application Form for Project Objectives and Performance Measures Information form and instructions are used by many ED discretionary grant programs to enable grantees to meet ED deadline dates for submission of performance reports to the Department.

Dated: February 8, 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. 2023–02979 Filed 2–10–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 7, 2023; 9:00 a.m. to 4:45 p.m. (eastern time).

ADDRESSES: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 468–1100.

Information to participate virtually can be found on the NSAC website closer to the meeting at: *https://science.osti.gov/np/nsac/meetings*.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, Committee Manager, NSAC, email: *brenda.may@science.doe.gov;* telephone: (301) 903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Offices
- Presentation of the Report of the Nuclear Data Charge
- Discussion of the Nuclear Data Report
- Long Range Plan Update & Discussion
- NSAC Business/Discussions
- Public Comment

Public Participation: The meeting is open to the public. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May at *Brenda.May@science.doe.gov*. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for review on the U.S. Department of Energy's Office of Nuclear Physics website at *https://science.osti.gov/np/nsac/meetings*.

Signed in Washington, DC, on February 8, 2023.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–03015 Filed 2–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2742–038]

Copper Valley Electric Association, Inc.; 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. *Type of Application:* Request to remove transmission line from project.

b. *Project No.:* 2742–038.

c. *Dates Filed:* October 31, 2022.

d. *Applicant:* Copper Valley Electric Association, Inc.

e. *Name of Project:* Solomon Gulch Hydroelectric Project.

f. *Location:* The project is located on Solomon Gulch in Valdez, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Travis Million, Chief Executive Officer, Copper Valley Electric Association, P.O. Box 45, Glenallen, AK 99588, (907) 822–3171.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance 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 docket number P–2742–038.

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 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 applicant requests to amend its license to remove the 108.16-mile-long segment of transmission line between the Petro Star switch building in Valdez, AK and a substation in Glenallen, AK, from the project. The applicant states the line segment is no longer a component of the project but would remain in operation to serve non-project purposes. The applicant intends to continue operating the 1.68-mile-long transmission line between the project and the Petro Star switch building as part of the project.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; 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. A copy of all other filings in reference to this application 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: February 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03011 Filed 2–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ23–6–001]

City of Riverside, California; Notice of Filing

Take notice that on February 3, 2023, the City of Riverside, California submits tariff filing: City of Riverside 2023 Transmission Revenue Balancing Account Adjustment and Existing Transmission Contracts Update Amendment, to be effective January 1, 2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to

Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5 p.m. Eastern Time on February 17, 2023.

Dated: February 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03009 Filed 2–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–55–000.

Applicants: SR Turkey Creek, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of SR Turkey Creek, LLC.

Filed Date: 2/6/23.

Accession Number: 20230206–5166.

Comment Date: 5 p.m. ET 2/27/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1951–054; ER10–1970–027; ER10–1972–027; ER10–1973–020; ER10–1974–031; ER10–2641–044; ER11–2192–021; ER11–2365–010; ER11–4677–025; ER12–676–021; ER12–2444–024; ER13–2461–022; ER14–2710–026; ER15–58–024; ER16–1440–020; ER16–1913–012; ER16–2241–019; ER16–2297–020; ER16–2506–020; ER17–196–010; ER17–838–051; ER18–807–011; ER18–1981–015; ER18–2224–018; ER19–11–010; ER19–2266–008; ER20–792–009; ER20–1219–007; ER20–1220–009; ER20–1417–008; ER20–1879–010; ER20–1985–007; ER20–1988–008; ER20–1991–009; ER20–2012–007; ER20–2648–008; ER21–183–007; ER21–1532–005; ER21–1880–005; ER21–2100–006; ER21–2641–006; ER22–96–004; ER23–147–001; ER23–148–001.

Applicants: Resurgence Solar II, LLC, Resurgence Solar I, LLC, Route 66 Solar Energy Center, LLC, Quinebaug Solar, LLC, Point Beach Solar, LLC, Niyol Wind, LLC, Quitman II Solar, LLC, Nutmeg Solar, LLC, Northern Divide Wind, LLC, Orbit Bloom Energy, LLC, Ponderosa Wind, LLC, Northern Colorado Wind Energy Center II, LLC, Northern Colorado Wind Energy Center, LLC, Oliver Wind Energy Center II, LLC, Roundhouse Renewable Energy, LLC, Oliver Wind II, LLC, Peetz Table Wind, LLC, Oklahoma Wind, LLC, Quitman Solar, LLC, Peetz Logan Interconnect, LLC, Pegasus Wind, LLC, Pratt Wind, LLC, Pinal Central Energy Center, LLC, NextEra Energy Marketing, LLC, Pima Energy Storage System, LLC, Oliver Wind III, LLC, Osborn Wind Energy, LLC, Ninnescah Wind Energy, LLC, River Bend Solar, LLC, Roswell Solar, LLC, Palo Duro Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC ,Pheasant Run Wind, LLC, North Sky River Energy, LLC, Perrin Ranch Wind, LLC, NextEra Energy Montezuma II Wind, LLC, Paradise Solar Urban Renewal, L.L.C., Red Mesa Wind, LLC, Oleander Power Project, Limited Partnership, Northeast Energy Associates, A Limited Partnership, NextEra Energy Seabrook, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Services Massachusetts, LLC.

Description: Notice of Change in Status of NextEra Companies, et al.

Filed Date: 2/1/23.

Accession Number: 20230201–5272.

Comment Date: 5 p.m. ET 2/22/23.

Docket Numbers: ER10–2078–026; ER11–4678–025; ER12–631–026; ER12–1660–027; ER13–2458–022; ER13–2474–025; ER14–2708–027; ER14–2709–026; ER15–30–024; ER15–1016–018; ER15–2243–016; ER16–1277–015; ER16–1293–015; ER16–2240–020; ER17–582–017; ER17–583–017; ER17–2270–019; ER18–2032–015; ER18–2091–012; ER18–2314–012; ER19–774–010; ER19–1076–010; ER19–1128–009; ER19–2382–011; ER19–2495–011; ER19–2513–011; ER20–637–009; ER20–780–009; ER20–2070–007; ER20–2153–009; ER20–2237–009; ER20–2380–007; ER20–2597–009; ER20–2603–009; ER20–2622–007; ER21–255–007; ER21–744–006; ER21–1506–006; ER21–1580–007; ER21–1813–009; ER21–1814–009; ER21–2048–007; ER21–2109–005; ER22–1370–006; ER22–1870–003; ER22–2601–002; ER22–2824–003; ER23–493–002.

Applicants: Thunder Wolf Energy Center, LLC, Yellow Pine Solar, LLC, Walleye Wind, LLC, Vansycle II Wind, LLC, Sunlight Storage, LLC, Wheatridge Solar Energy Center, LLC, Sac County Wind, LLC, Yellow Pine Energy Center II, LLC, Yellow Pine Energy Center I, LLC, Sky River Wind, LLC, Shaw Creek Solar, LLC, Wallingford Renewable Energy LLC, Taylor Creek Solar, LLC, Wilmot Energy Center, LLC, Skeleton Creek Wind, LLC, Soldier Creek Wind, LLC, Saint Solar, LLC, Weatherford Wind, LLC, Sanford Airport Solar, LLC, Wheatridge Wind II, LLC, Sooner Wind, LLC, Wilton Wind Energy I, LLC, Wilton Wind Energy II, LLC, Wessington Springs Wind, LLC, Story County Wind, LLC, Rush Springs Energy Storage, LLC, Windstar Energy, LLC, Stanton Clean Energy, LLC, Sholes Wind Energy, LLC, Titan Solar, LLC, Wildcat Ranch Wind Project, LLC, Stuttgart Solar, LLC, Whitney Point Solar, LLC, Westside Solar, LLC, Rush Springs Wind Energy, LLC, White Oak Solar, LLC, White Pine Solar, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Seiling Wind Interconnection Services, LLC, Seiling Wind II, LLC, Seiling Wind, LLC, Steele Flats Wind Project, LLC, Tuscola Wind II, LLC, Tuscola Bay Wind, LLC, Windpower Partners 1993, LLC, Vasco Winds, LLC, White Oak Energy LLC.

Description: Notice of Change in Status of NextEra Companies, et al.

Filed Date: 2/1/23.

Accession Number: 20230201–5273.

Comment Date: 5 p.m. ET 2/22/23.

Docket Numbers: ER10–3193–015; ER10–3195–009; ER10–3194–008; ER17–580–005; ER19–2707–005; ER10–1901–014; ER22–2030–002; ER22–2031–003; ER22–2580–001.

Applicants: CPV Three Rivers, LLC, Sonoran West Solar Holdings 2, LLC, Sonoran West Solar Holdings, LLC, Upper Peninsula Power Company, Poseidon Wind, LLC, Axium Modesto Solar, LLC, MATEP LLC, MATEP Limited Partnership, Brooklyn Navy Yard Cogeneration Partners, L.P.

Description: Notice of Change in Status of Brooklyn Navy Yard Cogeneration Partners, L.P., et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5517.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER19–2373–012; ER10–1972–028; ER10–1841–029; ER10–1907–028; ER10–1918–029; ER10–1950–029; ER10–1970–028; ER10–2005–029; ER10–2078–027; ER11–4462–077; ER12–1660–028; ER13–2458–023; ER13–2461–023; ER10–1852–077; ER16–1872–019; ER16–2506–021; ER17–838–052; ER17–2270–020; ER18–1771–018; ER18–2224–019; ER18–2246–018; ER19–987–016; ER19–1003–016; ER19–1393–016; ER19–1394–016; ER19–2382–012; ER19–2398–014; ER19–2437–012; ER19–2461–012; ER20–122–010; ER20–1220–010; ER20–1796–001; ER20–1879–011; ER20–1987–011; ER20–2690–010; ER21–1320–006; ER21–1953–008; ER21–2048–008; ER21–2100–007; ER22–381–007.

Applicants: Dunns Bridge Solar Center, LLC, Point Beach Solar, LLC, Sac County Wind, LLC, Heartland Divide Wind II, LLC, Crystal Lake Wind Energy III, LLC, Jordan Creek Wind Farm LLC, Cerro Gordo Wind, LLC, Oliver Wind I, LLC, Chicot Solar, LLC,

Oliver Wind Energy Center II, LLC, Crowned Ridge Interconnection, LLC, Crowned Ridge Wind, LLC, Emmons-Logan Wind, LLC, Hancock County Wind, LLC, Story County Wind, LLC, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Heartland Divide Wind Project, LLC, Pegasus Wind, LLC, Langdon Renewables, LLC, Stuttgart Solar, LLC, NextEra Energy Marketing, LLC, Oliver Wind III, LLC, Marshall Solar, LLC, Florida Power & Light Company, Pheasant Run Wind, LLC, Tuscola Wind II, LLC, Tuscola Bay Wind, LLC, NEPM II, LLC, White Oak Energy LLC, Ashtabula Wind II, LLC, NextEra Energy Duane Arnold, LLC, Garden Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy North Dakota Wind, LLC, Butler Ridge Wind Energy Center, LLC, NextEra Energy Point Beach, LLC, Ashtabula Wind I, LLC.

Description: Notice of Change in Status of Ashtabula Wind I, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5519.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER21–1755–003; ER17–380–004.

Applicants: Stored Solar J&WE, LLC, Hartree Partners, LP.

Description: Notice of Change in Status of Hartree Partners, LP, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5516.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER22–1982–005; ER20–820–011; ER21–2294–008; ER22–1870–004; ER22–2518–003; ER22–2536–003; ER22–2601–003; ER22–2634–003; ER22–2824–004; ER23–71–002; ER23–147–002; ER23–148–002; ER23–489–003; ER23–493–003; ER23–568–002; ER22–2516–002.

Applicants: Chaves County Solar II, LLC, Big Cypress Solar, LLC, Thunder Wolf Energy Center, LLC, Neptune Energy Center, LLC, Resurgence Solar II, LLC, Resurgence Solar I, LLC, Buena Vista Energy Center, LLC, Yellow Pine Solar, LLC, Buffalo Ridge Wind, LLC, Walleye Wind, LLC, Kossuth County Wind, LLC, Clearwater Wind I, LLC, Vansycle II Wind, LLC, Arlington Energy Center II, LLC, Blythe Solar IV, LLC, Great Prairie Wind, LLC.

Description: Notice of Change in Status of Great Prairie Wind, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5518.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER23–408–001.

Applicants: PacifiCorp.

Description: Compliance filing: OATT Existing Generator Replacement Procedures; Compliance Filing to be effective 1/10/2023.

Filed Date: 2/7/23.

Accession Number: 20230207–5061.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER23–1054–000.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: PPL Electric Utilities Corporation submits tariff filing per 35.13(a)(2)(iii): PPL submits SA No. 6789 Construction Service Agreement to be effective 1/9/2023.

Filed Date: 2/6/23.

Accession Number: 20230206–5073.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–1055–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Peach Blossom Energy III LGIA Termination Filing to be effective 2/6/2023.

Filed Date: 2/6/23.

Accession Number: 20230206–5103.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–1056–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Three Rocks Solar Amended & Restated LGIA Filing to be effective 1/24/2023.

Filed Date: 2/6/23.

Accession Number: 20230206–5104.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–1057–000.

Applicants: Basin Electric Power Cooperative.

Description: Initial rate filing: Basin Electric Submission of Miscellaneous Service Agreements to be effective 7/10/2020.

Filed Date: 2/6/23.

Accession Number: 20230206–5106.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–1058–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions involving Market Participant Event of Default to be effective 4/8/2023.

Filed Date: 2/6/23.

Accession Number: 20230206–5123.

Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–1059–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6773; Queue No. AD1–020 to be effective 1/10/2023.

Filed Date: 2/7/23.

Accession Number: 20230207–5083.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER23–1060–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original UCSA, Service Agreement No. 6776; Queue No. J875 to be effective 1/11/2023.

Filed Date: 2/7/23.

Accession Number: 20230207–5092.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER23–1061–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to OA & RAA re: 3Q & 4Q 2022 Updates to Member Lists to be effective 12/31/2022.

Filed Date: 2/7/23.

Accession Number: 20230207–5108.

Comment Date: 5 p.m. ET 2/28/23.

Docket Numbers: ER23–1062–000.

Applicants: Chaves County Solar, LLC.

Description: § 205(d) Rate Filing: Chaves County Solar, LLC and Chaves County Solar II, LLC A&R SFA to be effective 3/6/2023.

Filed Date: 2/7/23.

Accession Number: 20230207–5117.

Comment Date: 5 p.m. ET 2/28/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03008 Filed 2–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–014]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market and Planning Efficiency Through Improved Software

Take notice that Commission staff will convene a technical conference on June 27, 28, and 29, 2023 to discuss opportunities for increasing real-time and day-ahead market and planning efficiency through improved software. A detailed agenda with the list of and times for the selected speakers will be published on the Commission's website [1] and in eLibrary after April 14, 2023.

This conference will bring together and encourage discussion between experts from diverse backgrounds, including electric power system operators, software developers, and professionals from government, research centers, and academia. The conference will bring these experts together for the purposes of stimulating discussion, sharing information, and identifying fruitful avenues for research on improving software for increased efficiency and reliability of the bulk power system.

This conference will build on discussions at prior conferences in this proceeding by focusing on topics identified as important to market efficiency in those conferences. Broadly, such topics fall into the following categories:

Topics for presentations at the conference will include:

(1) Advances in power market software that can shorten day-ahead and real-time market solve times. This might include taking advantage of multiple cores and/or graphics processing units, reducing model granularity and/or the number of modeled constraints in places where it has little impact (especially in the day-ahead markets), migrating to higher-performance computing solutions, more efficient unit commitment formulations, and any other approaches to shortening day-ahead and real-time market solve times.

(2) Software related to implementing grid-enhancing technologies, such as those described in Docket Nos. AD19–19 [2] and AD19–15,[3] including optimal transmission switching, dynamic transmission line ratings, power flow controls, and any software related to implementing the Commission's recent rulemaking regarding line ratings in Order No. 881.[4]

(3) Software advances to help with the transition to increased use of probabilistic models in system planning and operations, whether scenario-based or stochastic, to better account for low-probability, high-impact events, such as extreme weather events, which are increasingly common. This could include software that improves resource adequacy and transmission planning models through means such as using down-scaled climate change scenarios in such models. This could also include software that improves forecasting of loads and generation during extreme weather events.

(4) Software and/or market designs that better represent and improve power markets' ability to meet emerging system needs. Among emerging needs described in recent Commission proceedings,[5] key examples include flexibility to manage increasing uncertainty in the operational and day-ahead and real-time time frame. Examples of software and/or market designs that improve power markets' ability to meet these and other emerging system needs include dynamic demand curves for existing reserve products, new reserve products, multi-interval market clearing, more granular market clearing (*e.g.,* 15-minute day-ahead markets), stochastic market clearing, improvements in forecasting and visibility, novel constraint relaxation hierarchies, and others.

(5) Software for better modeling and computation of resources with distinct operating characteristics such as storage resources, hybrid resources, aggregations of DERs, and others, including software that addresses challenges such resources pose to current market-clearing and dispatch algorithms.

(6) Other improvements in algorithms, model formulations, or hardware that may allow for increases in market efficiency and enhanced bulk power system reliability.

The conference will take place in a hybrid format, with presenters and attendees allowed to participate either in person or virtually. Further details on both in-person and virtual participation will be released prior to the conference.

Attendees must register through the Commission's website on or before June 2, 2023. Access to the conference (virtual or in-person) may not be available to those who do not register.

Speaker nominations must be submitted on or before March 24, 2023 through the Commission's website by providing the proposed speaker's contact information along with a title, abstract, and list of contributing authors for the proposed presentation. Proposed presentations should be related to the topics discussed above. Speakers and presentations will be selected to ensure relevance to those topics and to accommodate time constraints.

The Commission will accept comments following the conference, with a deadline of July 28, 2023.

There is an ''eSubscription'' link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov*

Alexander Smith (Technical Information), Office of Energy Policy and Innovation, (202) 502–6601, *Alexander.Smith@ferc.gov*

Dated: February 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03007 Filed 2–10–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *https://www.ferc.gov/industries-data/electric/power-sales-and-markets/increasing-efficiency-through-improved-software.*

[2] *Electric Transmission Incentives Policy under Section 219 of the Federal Power Act,* Docket No. AD19–19–000.

[3] *Managing Transmission Line Ratings,* Docket No. AD19–15–000.

[4] *Managing Transmission Line Ratings,* Order No. 881, 177 FERC ¶ 61,179 (2021).

[5] *See Modernizing Wholesale Electricity Market Design,* Docket No. AD21–10–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2466–037]

Appalachian Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2466–037.

c. *Date Filed:* February 28, 2022.

d. *Applicant:* Appalachian Power Company (Appalachian).

e. *Name of Project:* Niagara Hydroelectric Project (Niagara Project).

f. *Location:* The project is located on the Roanoke River, in Roanoke County, Virginia. The project occupies 0.9 acre of federal land managed by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jonathan Magalski, Environmental Supervisor, Renewables, American Electric Power Service Corporation c/o Appalachian Power Company, 1 Riverside Plaza, Columbus, OH 43215; Phone at (614) 716–2240 or email at *jmmagalski@aep.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519, or *laurie.bauer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary 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 motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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, 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: Niagara Hydroelectric Project (P–2466–037).

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 for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The existing Niagara Project consists of:* (1) a 52-foot-high, 462-foot-long concrete dam, inclusive of the right non-overflow abutment (70 feet long) and main spillway (392 feet long) with a crest elevation of 885 feet; [1] (2) a 62-acre impoundment with a gross storage capacity of 425 acre-feet at the normal pool elevation of 884.4 feet; (3) an 11-foot-diameter, 500-foot-long corrugated metal pipe penstock with associated entrance and discharge structures; (4) a 1,500-foot-long bypassed reach; (5) a 92-foot-long, 58-foot-wide, 42-foot-high concrete powerhouse containing two generating units with a total authorized installed capacity of 2.4 megawatts (MW); (6) a 103-foot-long auxiliary spillway with a crest elevation of 886 feet located downstream of the upstream intake; (7) transmission facilities consisting of 50-foot-long, 2.4-kilovolt (kV) generator leads and a 3-phase, 2.4/12-kV, 2,500-kilovolt ampere (kVA) step-up transformer; and (8) appurtenant facilities.

The Niagara Project operates in a run-of-river (ROR) mode under all flow conditions, where outflow approximates inflow, with an average annual generation of 8,557 megawatt-hours between 2018 and 2021. The project is operated to maintain the impoundment at or near elevation 884.4 feet, which is 0.6 foot below the crest of the main spillway. During extreme flow conditions, such as rapidly changing inflows, Appalachian operates the project with a minimum impoundment elevation of 883.4 feet. Appalachian provides a minimum flow of 50 cubic feet per second (cfs), or inflow to the impoundment, whichever is less, below the project as measured at the U.S. Geological Survey gage located approximately 200 feet downstream of the powerhouse. When the project is not generating, this flow is provided over the spillway. Appalachian also provides a year-round minimum flow of 8 cfs into the bypassed reach through the sluice gate or over the spillway.

Appalachian proposes to continue operating the project in a ROR mode and to increase the existing minimum flow provided to the bypassed reach from 8 cfs to 30 cfs to protect water quality and aquatic resources in the bypassed reach.

m. A copy of the application 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, contact FERC Online Support. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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, and .214. In determining

[1] All elevations are in National Geodetic Vertical Datum of 1929.

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.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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 protesting or intervening; 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. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application 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 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions.	April 2023.
Filing of Reply Comments	May 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.

q. *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.

Dated: February 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–03010 Filed 2–10–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10659–01–OA]

Local Government Advisory Committee (LGAC) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA hereby provides notice of a meeting for the Local Government Advisory Committee (LGAC) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The LGAC will meet virtually March 10th, 2023, from 11:00 a.m. through 2:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, Designated Federal Officer (DFO), at *LGAC@epa.gov* or 202–564–9957.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Paige Lieberman by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

Content

The LGAC will hear from EPA leadership regarding several new proposed charges. Details on the charges will be posted online (link below) one week prior to the meeting.

Registration

The meeting will be held virtually through an online audio and video platform. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at *LGAC@epa.gov* by January 12, 2023. The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/local-government-advisory-committee-lgac* and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Dated: February 6, 2023.

Paige Lieberman,

Designated Federal Officer, U.S. Environmental Protection Agency.

[FR Doc. 2023–03034 Filed 2–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10640–01–OA]

Notification of Public Meetings of the Clean Air Scientific Advisory Committee Ozone Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public meetings of the Clean Air Scientific Advisory Committee (CASAC) Ozone Panel. A public meeting will be held for the CASAC Ozone Panel to receive a briefing from EPA on the *Policy Assessment (PA) for the Reconsideration of the Ozone National Ambient Air Quality Standards, External Review Draft Version 2.* A second public meeting will be held for the panel to peer review the PA.

DATES: The briefing from EPA will be held on March 2, 2023, from 11 a.m. to 3 p.m. The public meeting for the panel to peer review the PA will be held on Wednesday, March 29, 2023, from 8 a.m. to 5 p.m. and Thursday, March 30, 2023, from 8 a.m. to 5 p.m. All times listed are in Eastern Time.

ADDRESSES: The briefing on March 2, 2023, will be conducted virtually. Please refer to the CASAC website at *https://casac.epa.gov* for information on how to attend the meeting. The public meeting on March 29, 2023, and March 30, 2023 will be conducted in person at the Hilton Durham near Duke University, 3800 Hillsborough Rd., Durham, NC 27705, and virtually. Please refer to the CASAC website at *https://casac.epa.gov* for details on how to access the meetings.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), SAB Staff Office, by telephone at (202) 564–2050 or via email at *yeow.aaron@epa.gov.* General information concerning the CASAC, as well as any updates concerning the meetings announced in this notice can be found on the CASAC website: *https://casac.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone and related photochemical oxidants.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, and conducts business in accordance with FACA and related regulations. The CASAC and the CASAC Ozone Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Ozone Panel will hold a public meeting to receive a briefing from EPA on the *Policy Assessment (PA) for the Reconsideration of the Ozone National Ambient Air Quality Standards, External Review Draft Version 2,* and a public meeting for the panel to peer review the PA.

Technical Contacts: Any technical questions concerning the PA should be directed to Ms. Leigh Meyer (*meyer.leigh@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC website: *https://casac.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. The public comment period will be on March 29, 2023. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by March 22, 2023, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by March 22, 2023. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact the DFO, at the contact information noted above, preferably at least ten days prior to each meeting, to give EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–02983 Filed 2–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–10643–01–ORD]

Request for Public Nominations of Experts to Serve on a Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking nominations for technical experts to serve as Special Government Employees (SGEs) on a review panel under the authority of the Board of Scientific Counselors (BOSC), a federal advisory committee to the Office of Research and Development (ORD). Selected experts will participate in the review of the ORD's draft report on a case study that uses value of information (VOI) analysis to weigh the public health and economic trade-offs associated with the timeliness, uncertainty, and costs of the draft EPA Transcriptomic Assessment Product (ETAP). The ETAP is a proposed ORD assessment product that utilizes a standardized short-term *in vivo* study design and data analysis procedures to develop transcriptomic-based toxicity values for data poor chemicals. The review will take place between April and July 2023. Submission of nominations should be made via the BOSC website at: *https://www.epa.gov/bosc.*

DATES: Nominations should be submitted by March 3, 2023, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public needing additional information regarding this Notice and Request for Nominations

may contact Mr. Tom Tracy, Office of Science Policy, Office of Research and Development, Mail Code B343–01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; via phone/voice mail at: (919) 541–4334; or via email at: *tracy.tom@epa.gov*. General information concerning the BOSC can be found at the following website: *https://www.epa.gov/bosc*.

SUPPLEMENTARY INFORMATION:

Background

The BOSC is a chartered Federal Advisory Committee established by the EPA to provide independent scientific and technical peer review, advice, consultation, and recommendations about ORD. As a Federal Advisory Committee, the BOSC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and related regulations. The BOSC is comprised of an Executive Committee and two supporting subcommittee(s): Social and Community Science, and Climate Change. Please visit *https://www.epa.gov/aboutepa/about-office-research-and-development-ord* to learn more about ORD's research programs. Members of the BOSC constitute a distinguished body of non-EPA scientists, engineers, and economists who are experts in their respective fields. The chartered BOSC provides scientific advice to the EPA Administrator on a variety of EPA science and research topics. All the work of BOSC standing committees and ad-hoc panels is conducted under the auspices of the chartered BOSC. The chartered BOSC executive committee review all BOSC standing committee and ad-hoc panel draft reports and determine whether each meets the BOSC's criteria and high-quality standards required to deliver them to the EPA Administrator.

The BOSC will evaluate ORD's draft report on a case study that uses value of information (VOI) analysis to weigh the public health and economic trade-offs associated with the timeliness, uncertainty, and costs of the draft EPA Transcriptomic Assessment Product (ETAP). The ETAP is a proposed ORD assessment product that utilizes a standardized short-term *in vivo* study design and data analysis procedures to develop transcriptomic-based toxicity values for data poor chemicals. The draft report will be provided in the BOSC docket prior to the meeting and will present an in-depth comparison of the ETAP with traditional toxicity testing and human health assessment processes across different chemical exposure scenarios, health endpoint valuations, exposure mitigation costs, and decision contexts. The review of the draft report on the VOI case study by the BOSC is being performed in close coordination with a separate BOSC review of the underlying scientific studies supporting development and implementation of the ETAP.

Expertise Sought

The EPA invites nominations of individuals to serve as SGEs with expertise or extensive experience in the following scientific disciplines and topic areas as they relate to human health and the environment:

- Decision analysis, including value of information
- Human health chemical risk assessment
- Toxicology
- Exposure science, including computational exposure modeling
- Statistics, including Bayesian methods
- Health economics
- Transcriptomics, including dose response modeling of transcriptomic data

Selection Criteria

Nominations will be evaluated on the basis of several criteria including: (a) demonstrated scientific and/or technical credentials and disciplinary expertise, knowledge, and experience in relevant fields; (b) availability to serve and willingness to commit time to the committee (approximately one to three meetings per year both by teleconferences and possibly face-to-face meetings); (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) demonstrated ability to work constructively and effectively on committees; and (f) background and experiences that would contribute to the diversity of viewpoints, *e.g.,* workforce sector, geographical location, social, cultural, and educational backgrounds, and professional affiliations.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment as an SGE. Nominations should be submitted via the BOSC website at: *https://www.epa.gov/bosc*. Nominations should be submitted no later than March 3, 2023. To receive full consideration, nominations should include all the information requested. EPA's nomination form requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita and/or resume; and additional information that would be useful for considering the nomination such as background and qualifications (*e.g.,* current position, educational background, expertise, research areas), experience relevant to one or more of ORD's research programs, service on other advisory committees and professional societies, and availability to participate as an SGE. Persons having questions about the nomination procedures, or who are unable to submit nominations through the BOSC website, should contact Mr. Tom Tracy, as indicated above under **FOR FURTHER INFORMATION CONTACT** section of this notice.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2023–03018 Filed 2–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0967; FRL–10468–01–OLEM]

Proposed Variances from the Classification of Solid Waste for HVF Precious Metals, LLC (Tucson, AZ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative decision.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition for variances from the classification as solid waste for two materials produced by HVF Precious Metals, LLC (HVF) at its facility in Tucson, Arizona.

DATES: Comments must be received on or before March 30, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2022–0967 to:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30

a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

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

FOR FURTHER INFORMATION CONTACT: For further information regarding the **Federal Register** notice, contact Phoebe O'Connor, Office of Resource Conservation and Recovery, Office of Land and Emergency Management, (5304T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1451; email address: *Oconnor.phoebe@epa.gov.*

For further information regarding the incoming petition, Statement of Basis, and any technical questions, contact Amanda Cruz, RCRA Branch; Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, (Mail code LND–4–2), San Francisco, CA 94105; telephone number: (415) 972–3084; email address: *cruz.amanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0967 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about PBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

Section 260.30(c) allows the EPA Administrator to determine on a case-by-case basis that materials that have been reclaimed but must be further reclaimed before the materials are fully recovered are not solid wastes. The effect of a variance from the classification of solid waste is to exempt the material from RCRA hazardous waste regulations. The EPA's proposal responds to a petition submitted by HVF on July 26, 2022 (HVF's Petition). HVF's Petition concerns two partially-reclaimed materials (''Solution Sweeps'' and ''Filter Sweeps'') produced at its Tucson, Arizona facility from precious metal-bearing waste from cyanide-based electroplating operations. As explained in the ''Statement of Basis'' available in the docket [Docket ID EPA–HQ–OLEM–2022–0967–0001], EPA's preliminary determination is that the two materials produced by HVF are ''commodity-like'' under the criteria listed in § 260.31(c) and are legitimately recycled, thus qualifying for variances from classification as solid waste under § 260.30(c). The EPA seeks comment on the environmental justice impacts of this proposed variance.

For information on The EPA's rationale for granting the petition, see the attached ''Statement of Basis'' available in the docket [Docket ID EPA–HQ–OLEM–2022–0967–0001].

Michael S. Regan,

Administrator.

[FR Doc. 2023–02555 Filed 2–10–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 28, 2023.

A. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President, Formations, Transactions and Enforcement) 101 Market Street, San Francisco, California 94105–1579.

1. *Daniel J. Pedack, individually and as trustee of the Daniel J. Pedack Revocable Trust, both of Bonney Lake, Washington; David F. Pedack, individually and as trustee of the David F. Pedack Revocable Trust, both of Seattle, Washington; Eric S. Pedack, individually and as trustee of the Eric S. Pedack Revocable Trust, both of Edmonds, Washington; and John A. Pedack, individually and as trustee of the John A. Pedack, Revocable Trust, both of Everett, Washington;* to join the Pedack Family Control Group, a group acting in concert to acquire additional voting shares of Mountain Pacific Bancorp, Inc., and thereby indirectly acquire additional voting shares of Mountain Pacific Bank, both of Everett, Washington.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–03023 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics; Cancellation of Meeting

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

ACTION: Notice.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS); February 15, 2023, from 11 a.m. to 4:30 p.m., EST, in the original **Federal Register** notice.

The virtual meeting was published in the **Federal Register** on January 11, 2023, Volume 88, Number 7, pages 1582–1583.

This meeting is being canceled in its entirety.

FOR FURTHER INFORMATION CONTACT: Rebecca Hines, M.H.S., Designated Federal Officer, Board of Scientific Counselors, National Center for Health Statistics, 3311 Toledo Road, Mailstop P–08, Hyattsville, Maryland 20782; Telephone: (301) 458–4715; Email: *RSHines@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. 2023–02966 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP23–001, Public Health Epidemiology, Prevention and Control of Influenza and Other Respiratory Pathogens in China, RFA–IP23–004, Developing, Implementing, and Evaluating Protocols To Increase Routine Adult Immunization Coverage Among Persons Who Are Incarcerated, and RFA–IP23–005, Approach to Adult Vaccine Counseling; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP23–001, Public Health Epidemiology, Prevention and Control of Influenza and Other Respiratory Pathogens in China, RFA–IP23–004, Developing, Implementing, and Evaluating Protocols to Increase Routine Adult Immunization Coverage Among Persons Who are Incarcerated, and RFA–IP23–005, Approach to Adult Vaccine Counseling; April 11–12, 2023, 10 a.m.–5 p.m. EDT, Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Boulevard, Atlanta, Georgia 30329 in the original FRN. The meeting was published in the **Federal Register** on January 11, 2023, Volume 88, Number 7, page 1584.

The meeting is being amended to remove the second day and should read as follows:

Date: April 11, 2023.

Time: 10 a.m.–5 p.m. (EDT).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329.

The meeting is closed to the public.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8833; Email: *GAnderson@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. 2023–02965 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Establishment of the Coronavirus and Other Respiratory Viruses Division

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

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the establishment of the Coronavirus and other Respiratory Viruses Division and other organizational components within the National Center for Immunization and Respiratory Diseases (NCIRD), Deputy Director for Infectious Diseases (DDID), CDC.

DATES: This reorganization was approved by the Secretary of HHS on January 24, 2023, and became effective February 8, 2023.

SUPPLEMENTARY INFORMATION: Part C CDC of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 87 FR 51670–51675, dated August 23, 2022) is amended to reflect the reorganization of NCIRD, DDID, CDC. Specifically, the changes are as follows:

Under Part C, Section C–B, Organization and Functions, delete and/or update functional statements for NCIRD in their entirety and replace with the following:

NCIRD (CVG)

NCIRD prevents disease, disability, and death through immunization and by control of respiratory and related diseases. In carrying out its mission, NCIRD: (1) Provides leadership, expertise, and service in laboratory and epidemiological sciences, and in immunization program delivery; (2) conducts applied research on disease prevention and control; (3) translates research findings into public health policies and practices; (4) provides diagnostic and reference laboratory services to relevant partners; (5) conducts surveillance and research to determine disease distribution, determinants, and burden nationally and internationally; (6) responds to disease outbreaks domestically and abroad; (7) ensures that public health decisions are made objectively and based upon the highest quality of scientific data; (8) provides technical expertise, education, and training to domestic and international partners; (9) provides leadership to internal and external partners for establishing and maintaining immunization, and other prevention and control programs; (10) develops, implements, and evaluates domestic and international public health policies; (11) communicates information to increase awareness, knowledge, and understanding of public health issues domestically and internationally, and to promote effective immunization programs; (12) aligns NCIRD's focus with the overall strategic goals of CDC; (13) synchronizes all aspects of CDC's pandemic preparedness and response from

strategy through implementation and evaluation; and (14) implements, coordinates, and evaluates programs across NCIRD, DDID, and CDC to optimize public health impact.

Office of the Director (OD) (CVG1)

(1) Provides leadership, expertise, and service in laboratory and epidemiological sciences for respiratory and vaccine preventable diseases and in immunization program delivery; (2) provides diagnostic and reference laboratory services to relevant partnerships; (3) works with DDID to ensure spending plans, budget planning, and budget execution are in line with the overall infectious disease strategies and priorities; (4) ensures that NCIRD's strategy is executed by the divisions and aligned with overall CDC goals; (5) co-develops execution strategies for NCIRD with the division directors; (6) provides program and science quality oversight; (7) builds leadership at the division and branch levels; (8) evaluates the strategies, focus, and prioritization of the division research, program, and budget activities; (9) identifies and coordinates synergies between NCIRD and relevant partners; (10) ensures that policy development is consistent and appropriate; (11) facilitates research and program activities by providing leadership support; (12) proposes resource priorities throughout the budget cycle; (13) ensures scientific quality, ethics, and regulatory compliance; (14) fosters an integrated approach to research, program, and policy activities; (15) liaises with HHS and other domestic and international immunization and respiratory disease partners as well as with NCIRD divisions; (16) coordinates center's emergency response activities related to immunization issues and complex acute respiratory infectious disease emergencies; (17) applies communication science, media principles, and web design to support NCIRD and CDC's efforts to reduce morbidity and mortality caused by vaccine-preventable and respiratory diseases; ensuring that communication distributed by the center is timely, accurate, clear and relevant to intended audiences; (18) provides guidance for key scientific and laboratory services in the functional areas of extramural research (research and non-research), human studies oversight and review, regulatory affairs; activities in the area of space planning, advising, coordination and evaluation, safety management and coordination, and shared services in controlled correspondence, and programmatic services in the area of workforce and career development; (19) provides and coordinates center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; and (20) manages the coordination of workforce development and succession planning activities, and provides human capital management, planning, and training consultation services.

Office of Informatics (CVG12)

(1) Manages all IT project costs, schedules, performances, and risks; (2) provides expertise in leading application development techniques in information science and technology to affect the best use of resources; (3) performs technical evaluation and/or integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with DDID strategy; (4) provides access to quality data in support of programmatic data analysis; (5) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Officer and relevant enterprise governance bodies, such as the IT and Data Governance; (6) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (7) ensures adherence to CDC enterprise architecture guidelines and standards; (8) consults with users to determine IT needs and to develop strategic and action plans; (9) participates in the evolution, identification, development, or adoption of appropriate informatics standards in conjunction with the DDID; and (10) provides leadership in initiatives focused on data and IT modernization that aligns with CDC agency goals for public health data modernization.

Office of Policy (CVG13)

(1) Serves as liaison with CDC/OD and other Centers, Institute, Offices (CIO) policy offices, HHS and other government agencies, and external partners on policy, program, legislative, and budgetary issues related to NCIRD; (2) leads annual NCIRD budget formulation and development of appropriations materials; (3) provides expertise and guidance for strategic planning and performance measurement; (4) oversees and coordinates NCIRD accountability activities, including Government Accountability Office and Inspector General studies, audits and reviews, as well as center responses to Freedom of Information Act requests, and correspondence from partners, Congress, and the public; (5) creates and provides briefing documents and materials for executive leadership within NCIRD, DDID, and CDC on NCIRD's policy and programmatic issues; (6) conducts legislative monitoring and analysis; (7) provides NCIRD with leadership and advice in the management of congressional and governmental relations; (8) works with NCIRD divisions to coordinate policy requests across the center; (9) manages cross-cutting policy issues within NCIRD and, as appropriate, with other CIO and OD offices within CDC; and (10) collaborates across NCIRD and CDC to build and maintain partnerships that support NCIRD's domestic and global goals and initiatives, including promoting vaccination across the lifespan; prevention, detection and control of respiratory diseases; and preparedness for pandemics and other respiratory disease outbreaks.

Office of Health Communications Science (CVG15)

(1) Supports NCIRD's mission through the planning, development, implementation, and evaluation of science-based health communication activities and programs; (2) applies communication science, media principles, and web design to support NCIRD and CDC's efforts to reduce morbidity and mortality caused by vaccine-preventable and respiratory diseases; (3) conducts projects that translate scientific and medical information into messages for a variety of audiences using an array of media/formats; (4) improves understanding of vaccine benefits and risks among partners, healthcare providers and public audiences; (5) improves understanding among specialized audiences such as policy-makers and public health officials nationally and internally of NCIRD's work; (6) supports public health partners via technical assistance and other methods; (7) demonstrates best practices in writing using plain language and health literacy principles, creating culturally appropriate materials; (8) coordinates CDC's pandemic influenza communication preparedness activities; (9) leads the development and implementation and evaluation of major cross cutting communication campaigns for vaccines preventable diseases; and (10) conducts behavioral and communication research to ensure that messages and strategies are clear, relevant, and potentially impactful to intended audiences.

Office of Management & Operations (CVG16)

(1) Plans, coordinates, directs and provides advice and guidance on management and administrative operations of NCIRD in the areas of fiscal management, personnel, human capital, workforce training and development, travel, records management, facility management, and other administrative related services; (2) prepares and distributes annual budget plans and provides overall direction for planning and management oversight of allocated resources; (3) provides guidance on NCIRD requirements related to intramural and extramural activities, purchases, and agreements; (4) reviews the effectiveness and efficiency of the operation and administration of all NCIRD programs; (5) develops and implements administrative policies and procedures; (6) prepares special reports and studies in the administrative management areas; and (7) coordinates workforce development and succession planning activities for and with the center, providing human capital management, planning, and training consultation services to manage evolving workforce needs and skillset requirements.

Office of Science (CVG17)

(1) Links strategies and priorities of the primarily programmatic-focused NCIRD divisions with those of primarily disease-based divisions; (2) facilitates development and ongoing implementation of integrated infectious respiratory disease (including influenza) surveillance, research and prevention, and control activities across the divisions, both domestically and globally, including supporting implementation of NCIRD's respiratory diseases strategic prevention priorities; (3) meets with other CDC CIOs working in the area of respiratory diseases; (4) coordinates and facilitates NCIRD's overall respiratory and vaccine preventable disease scientific/research agenda; (5) assumes responsibility for the protection of human research subjects, scientific review, clearance of manuscripts and other written materials; (6) provides planning and coordination of overall surveillance strategies, preparedness, response, and prevention effectiveness related to a center-wide public health scientific agenda and quantifies how programs and activities promote cost-effective and high impact prevention strategies with respect to immunization and other vaccine-preventable disease programs; (7) provides leadership (agency and center-wide) for vaccine-preventable and respiratory disease surveillance to include guidance and coordination of NCIRD surveillance activities and systems, leadership on issues related to internal and external integration of CDC surveillance activities, and alignment with enterprise-wide data and IT governance and modernization strategy; (8) coordinates, facilitates, and integrates domestic and international respiratory and vaccine-preventable disease surveillance activities through existing methods while developing new approaches, tools, and analyses for these activities; (9) fosters a multidisciplinary approach to epidemiology, statistics, informatics, laboratory methods, and evaluation; (10) provides leadership, expertise, and service in laboratory science; (11) represents NCIRD's interests in cross-cutting laboratory services in DDID which include, but are not limited to, laboratory information systems, quality management systems, and bioinformatics; (12) ensures a safe working environment in NCIRD laboratories; (13) collaborates effectively with other centers and offices in carrying out its functions; (14) manages CDC's intellectual property (*e.g.,* patents, trademarks, copyrights) and promotes the transfer of new technology from CDC research to the private sector to facilitate and enhance the development of diagnostic products, vaccines, and products to improve occupational safety; (15) provides oversight, guidance and coordination relating to the application of social and behavioral sciences to support impactful research and programs to achieve healthy behavior change; (16) coordinates and tracks health equity science and program activities within NCIRD and with partners; and (17) supports research, surveillance, education, training, and program development to achieve healthy equity and reduce health disparities.

Office of Global Health, Preparedness, and Response (CVG18)

(1) Advises NCIRD and CDC leadership on global health and pandemic preparedness related to current and known threats such as coronavirus disease 2019 (COVID–19) and influenza, and to emerging pandemic threats; (2) provides strategic leadership for CDC in the areas of pandemic preparedness and response and global health related to respiratory and vaccine preventable diseases including establishing NCIRD priorities, promoting science, policies, and new programs; (3) coordinates NCIRD efforts related to funding and budgets for global health security and pandemic preparedness and response; (4) supports NCIRD's work across CDC and the federal government on global health security, respiratory diseases, and pandemic preparedness and response; and (5) coordinates across NCIRD, CDC, and with partners to plan for and exercise responses to pandemic and other threats.

Immunization Services Division (ISD) (CVGB)

ISD protects individuals and communities from vaccine-preventable diseases across the lifespan through: provision of federal funds and contracts to purchase and distribute vaccines; provision of technical and financial support for immunization programs, partners, and for efforts to increase equity in immunization; provision of provider, patient, and public immunization education and communication; surveillance of vaccination coverage and vaccine attitudes; and evaluation and research to identify root causes of under vaccination and vaccine inequity.

ISD Office of the Director (CVGB1)

(1) Supports ISD's mission through leadership across the branches related to domestic vaccination efforts and vaccine-preventable disease preparedness and response elements and links strategies and priorities with other NCIRD divisions; (2) facilitates development and ongoing implementation of vaccination coverage surveillance, health services and economic research, and program evaluation across ISD branches; (3) provides direct management, oversight, and execution of national vaccine supply contracts; (4) provides direct management and execution of procurement requisitions, contracts, and cooperative agreements, and performs administrative tasks related to initiating, processing, and maintaining interagency agreements; (5) provides direct management and execution of human resources, administrative functions, and workplace climate and facility management across ISD; (6) provides guidance related to and protection of human research subjects, Office of Management and Budget and Paperwork Reduction Act compliance, and scientific initiatives across ISD branches; (7) furthers data strategy, IT governance, and data-related policy across the division, through coordinated work across ISD; (8) provides leadership for activities in ISD related to health equity, including improving equity in access to vaccination opportunities and vaccination coverage rates across different populations; (9) coordinates programs and activities to help achieve

and sustain increased vaccination coverage among uninsured and underinsured adults; (10) coordinates and supports activities across the division related to cross-cutting topics, such as emergency preparedness, clinical expertise, jurisdictional coordination, and vaccine confidence and demand; (11) provides direct management and oversight for division-wide communications and policy, including liaisons to the branches; (12) serves as liaison to other policy offices, other government agencies, and external partners on policy, program, legislative, and budgetary issues related to ISD; (13) manages and executes cross-cutting communications to support ISD's mission to protect individuals and communities from vaccine-preventable diseases; (14) promotes internal awareness of division initiatives and guidance through timely, accurate, clear, and relevant communications; (15) provides technical assistance to ISD branches in the development and revision of operational manuals, job aids, and web pages; (16) manages the all-jurisdiction email account by maintaining distribution lists (in collaboration with ISD branches) and disseminating messaging to jurisdictions and partners on behalf of ISD and its branches and programs.

Immunization Operations and Services Branch (CVGBB)

(1) Serves as CDC's primary interface with the state, local, and territorial health department immunization programs funded by cooperative agreements related to Vaccines for Children (VFC), Section 317, and other programs that support immunization across the lifespan, supporting them with development, implementation, assessment, and promotion of vaccination-related activities with the goal of achieving and sustaining high and equitable vaccination coverage levels across the lifespan; (2) serves as ISD's lead in the management, processing, and monitoring of the funding provided through the cooperative agreements related to VFC, Section 317, and other programs supporting immunization across the lifespan; (3) administers the operations of the VFC, Section 317, and other appropriate programs for eligible jurisdictions; (4) provides technical assistance to jurisdictions on program implementation for child, adolescent, and adult activities, including implementation of all components of the cooperative agreements; (5) provides subject-matter expertise on adult immunization program implementation and guidance; (6) monitors performance of recipients of the cooperative agreements related to VFC, Section 317, and other programs supporting immunization across the lifespan; (7) oversees management and operations of jurisdiction-vaccination provider engagement programs and efforts (*i.e.,* VFC and Section 317 quality assurance, quality improvement [in cooperation with the Applied Research, Implementation Science, and Evaluation Branch] perinatal hepatitis B prevention, and vaccine accountability [in cooperation with the Vaccine Supply and Assurance Branch]).

Vaccine Supply and Assurance Branch (CVGBC)

(1) Manages logistics for the public sector vaccine supply chain; (2) supports supply chain immunization activities carried out by state, local, and territorial health department immunization programs and their enrolled providers, funded by cooperative agreements related to VFC, Section 317, or other programs that support immunization across the lifespan; (3) provides planning, purchasing, ordering, distribution, and management of vaccine supply shortages and constraints; (4) establishes and manages contracts for the purchase of vaccines across the lifespan; (5) creates and maintains pediatric vaccine stockpiles for the VFC program; (6) tracks and monitors seasonal influenza vaccine distribution; (7) maintains subject matter expertise and provides technical assistance related to jurisdiction vaccine planning activities and vaccine storage and handling; (8) serves as the business owner for CDC's vaccine order management system (VTrckS); engage in strategic planning for the modernization and defect/enhancement testing for VTrckS [in collaboration with the Informatics and Data Analytics Branch]; provides support and training for jurisdiction users of VTrckS; (9) manages contracts that provide technical, operational, and user support for VTrckS; (10) uses vaccine purchase and order data to support activities within the branch, respond to internal and external data calls, provide jurisdiction feedback, and collaborate on CDC-sponsored evaluation activities.

Informatics and Data Analytics Branch (CVGBE)

(1) Provides leadership, technical assistance, technology tools, data quality assurance, and resource support to develop capacity for a nationwide network of fully operational and integrated immunization information systems (IISs); (2) increases the quality of IIS data across the lifespan and system functionality and security by identifying, developing, implementing, promoting, and evaluating standards and best practices in collaboration with other federal agencies and partners; (3) supports exchange of high-quality IIS data between jurisdictions' clinical, administrative, public health immunization stakeholders, and federal partners; (4) promotes the effective use of IIS data and systems to support vaccination providers, public health programs, and other immunization stakeholders; (5) monitors, evaluates, and reports on IIS data to improve operations and immunization program outcomes; (6) maintains informatics capability and information technology tools to support immunization programs at the provider, jurisdiction, and federal level; and (7) influences health information technology policies and standards to improve the quality of immunization data submitted by healthcare systems.

Surveillance and Epidemiology Branch (CVGBG)

(1) Leads domestic vaccination coverage and vaccine confidence and demand assessment across the lifespan; (2) collects, analyzes, and disseminates accurate and timely data for action—including data related to vaccination coverage, utilization data, and related information from available data sources (including but not limited to data from national surveys, health systems, and medical claims) in conjunction with subject matter experts in other ISD branches as appropriate; (3) assesses equity in vaccination coverage and vaccine confidence and demand among racial/ethnic minorities and other populations disproportionately affected by health inequities; (4) in conjunction with other ISD branches, assists national, state, and local immunization programs in collection, analysis, interpretation, and use of vaccination coverage and vaccine confidence and demand assessment to guide policy and program activities; (5) conduct and manage the family of surveys under the National Immunization Survey contract to assess vaccination coverage and behavioral and social drivers of vaccination; and (6) evaluate and find methods to improve the usefulness of existing and potential new data sources for assessment of vaccination coverage and behavioral and social drivers of vaccination.

Health Education and Communication Branch (CVGBH)

(1) Provides education and communication materials and resources

to improve knowledge and acceptance of vaccines among healthcare providers and the public to increase vaccine uptake across the lifespan, thus reducing vaccine-preventable diseases; (2) provides education and communication materials and resources to improve clinical knowledge among healthcare providers and other healthcare personnel about the proper storage, handling, preparation, and administration of vaccines to help ensure vaccine safety; (3) collaborates across NCIRD to develop communication strategies to increase vaccinations across the lifespan; (4) develops and disseminates, by a variety of mechanisms, domestic immunization messages, materials, educational resources, and training for healthcare providers and patients related to ISD's scientific, clinical, and programmatic work; (5) provides technical assistance for healthcare providers, state and local health departments, and other groups on communication science and implementation, scalable programmatic action, and evaluation of education and communication strategies to improve vaccine confidence and vaccination coverage rates; (6) provides continuing education credits for immunization-related education and training products; (7) leads the Advisory Committee on Immunization Practices (ACIP) Child and Adolescent and Adult Immunization Schedules Work Group and General Best Practices Work Group, participates in other ACIP work groups, and develops and promotes resources related to ACIP schedules and recommendations; (8) develops and promotes social media and other initiatives to combat immunization misinformation and/or disinformation and promote vaccine confidence and equity; (9) collaborates with ISD policy, communication, and implementation science functions to address communication science needs; (10) responds to clinically or programmatically relevant immunization inquiries via NIP–INFO, an email inquiry service for health departments and healthcare providers; and (11) develops vaccine information statements as required by law.

Applied Research, Implementation Science, and Evaluation Branch (CVGBJ)

(1) Synthesizes literature/data and conducts health services and economic research to understand reasons for under-vaccination and vaccine inequities across the lifespan; (2) designs strategies to increase vaccination coverage, equity, and confidence, and assess strategy effectiveness; (3) translates and adapts evidence-based strategies for scalable programmatic action; (4) designs ISD's quality improvement activities; define their standards and requirements for implementation and for data collection, reporting, and sharing; (5) provides technical assistance and facilitate research and evaluation capacity building among CDC-funded immunization programs; (6) supports program effectiveness activities conducted by CDC-funded immunization programs; (7) monitors trends in access to vaccines, vaccine knowledge, attitudes, and perceptions, including vaccine confidence; (8) provides division-wide subject matter expertise on evaluation; and (9) conducts over-arching evaluation of the national immunization program to inform program improvement.

Field Services Branch (CVGBK)

(1) Provides support to the state, local, and territorial health department immunization programs funded by cooperative agreements related to VFC, Section 317, and other programs supporting immunization across the lifespan for immunization program implementation through the assignment of CDC staff as requested by jurisdictions to address gaps in capacity; (2) based on the agreements with each jurisdiction, provides official supervision and high-level training of staff assigned to health departments to assist with jurisdiction immunization program operations; and (3) supports the needs and provides tools for staff embedded in jurisdictions and local health departments.

Partnership and Health Equity Branch (CVGBL)

(1) Collaborates with public health partner groups to achieve national immunization program goals and scalable programmatic action; (2) partners with national, state, local, and community-based organizations to achieve greater equity in access to and demand for administration of vaccines across the lifespan; (3) partners with non-governmental professional organizations to support immunization recommendations, and education, communication, training, and quality improvement strategies; (4) partners with other federal agencies to ensure coordination of efforts related to equity and vaccination; (5) provides technical assistance and capacity-building support to funded and unfunded partners to achieve immunization and equity goals; (6) facilitates a shared learning forum and learning opportunities for partners to provide strategies and resources on promoting vaccine equity; (7) monitors opportunities for future partnerships, especially those that serve adult, underrepresented, and disproportionately affected populations; (8) evaluates funded partnerships to ensure that projects are meeting workplan objectives and other requirements; and (9) monitors and supports needs of immunization partners external to ISD.

Influenza Division (ID) (CVGD)

ID improves global control and prevention of seasonal and novel influenza and improves influenza pandemic preparedness and response. In collaboration with domestic and global partners, ID: (1) Builds surveillance and response capacity; (2) monitors and assesses influenza viruses and illness; (3) improves vaccines and other interventions; and (4) applies research to provide science-based enhancement of prevention and control policies and programs.

ID Office of the Director (CVGD1)

(1) Provides vision, leadership, and direction for the division; (2) fosters external partnerships and cross-cutting activities that support quality science and strong global partnerships; (3) provides leadership and guidance in policy formulation; (4) provides technical expertise and leadership for national and international pandemic preparedness activities; and (5) provides technical expertise for communications, public health guidance, informatics, epidemiologic, and laboratory science, and reagent resources.

Virology, Surveillance, and Diagnosis Branch (CVGDB)

(1) Conducts comprehensive antigenic, phenotypic, genotypic, structural, and evolutionary characterization of human and animal influenza viruses; (2) performs genetic and antigenic pandemic risk assessment of novel influenza viruses; (3) develops and evaluates novel and seasonal candidate vaccine viruses; (4) provides expert guidance on influenza vaccine virus selection; (5) develops methods to detect and characterize influenza viruses; and (6) trains and supports laboratories that perform influenza testing.

Epidemiology and Prevention Branch (CVGDC)

(1) Conducts surveillance, research, modeling, and forecasting activities to better understand and monitor the epidemiology of influenza viruses and disease; (2) improves understanding of

the effectiveness of influenza antiviral drugs, vaccines, and non-pharmaceutical interventions; (3) assists state and local health departments to conduct surveillance and optimize activities related to the detection and response to emerging and novel influenza viruses; (4) supports influenza vaccine policy; and (5) supports influenza pandemic preparedness activities.

Immunology and Pathogenesis Branch (CVGDE)

(1) Increases knowledge and improves understanding of immunity and immune correlates of protection; (2) develops and improves vaccines; (3) determines virus and host factors that impact virulence and transmission of influenza viruses; (4) conducts immunologic and virologic pandemic risk assessment of novel influenza viruses; and (5) trains and supports laboratories that perform immunologic testing.

Global Influenza Branch (CVGDG)

(1) Supports capacity building to improve global surveillance for influenza viruses and disease; (2) conducts surveillance, program evaluations, research, and modeling activities to improve our understanding of global influenza; (3) assists with detection and response to emerging and novel influenza viruses outside the United States; (4) promotes prevention and control activities including the expanded use of influenza vaccines globally; and (5) supports global pandemic preparedness activities.

Division of Viral Diseases (DVD)(CVGE)

DVD prevents disease, disability, and death through immunization and control of enteric, and related viral diseases. In carrying out this mission, DVD: (1) Conducts surveillance and related activities to determine patterns of infection and disease and impact of prevention programs; supports and provides technical assistance to state and local health departments to conduct surveillance and related activities; (2) conducts epidemiologic and laboratory studies to define patterns of, and risk factors for, infection, disease, and disease burden; estimates vaccine effectiveness, determines cost effectiveness of vaccines, and evaluates other aspects of immunization programs; identifies and evaluates non-vaccine prevention strategies; and provides epidemiologic and laboratory expertise to other Nation Centers (NCs), collaborators, and partners on vaccination and other prevention strategies; (3) provides consultation on viral vaccine preventable, and enteric diseases, and the use of vaccines and other measures to prevent infections; (4) provides consultation and support and/or participates in investigations of viral vaccine preventable and enteric viral diseases domestically and internationally, and recommends appropriate control measures; (5) provides scientific leadership and advice, analyzes and synthesizes available data, and develops science-based statements for use of viral vaccines to ACIP and other groups to support the development and evaluation of immunization practices and policies domestically and internationally; (6) provides laboratory support for surveillance and epidemiologic studies and maintains reference/diagnostic services and expertise; (7) conducts studies of immunology and pathogenesis of disease and the biologic, biochemical, genetic and antigenic characteristics of the agents; (8) develops, evaluates, and improves diagnostic methods and reagents, and transfers assays and techniques to other public health laboratories; (9) facilitates and participates in the development and evaluation of antiviral compounds, vaccines, and vaccination programs; (10) provides and supports public health training; (11) responds to and assists internal and external partners on other public health problems of national and international significance, as needed; (12) provides technical support to state immunization programs for all aspects of vaccine-preventable diseases and their vaccines; (13) provides leadership in vaccine science; and (14) supports CDC's Immunization Safety Office (ISO) in vaccine safety risk assessment and leadership in vaccine safety risk management.

DVD Office of the Director (CVGE1)

(1) Manages, directs, coordinates and monitors the activities of the division; (2) provides overall guidance and direction for the division's epidemiologic, surveillance, research, laboratory, outbreak response, and other scientific and immunization-related activities; (3) sets short- and long-term programmatic goals and outlines strategic achievements in alignment with NCIRD priorities; (4) monitors and evaluates progress of division- and branch-led programs, promotes program improvements, and facilitates strategic decision-making; (5) provides analysis and facilitates strategic use of public health policies and operational procedures for continuous risk management and operational efficiencies; (6) identifies needs and allocates resources for ongoing and new initiatives and assigns responsibilities for their development; (7) communicates division public health messages to internal and external audiences via conventional media, web, social media, professional organizations, and other venues, to maximize impact of division programs; (8) provides leadership and guidance in policy formulation, partnerships, program planning and development, program management, and operations of the division; (9) provides division leadership, expertise, and technical collaboration for the application of statistics, economics, operations research, geospatial analysis, other quantitative sciences, informatics, and data management to prevent disease, disability and death through immunization and control of enteric, and other viral diseases; (10) provides next-generation sequencing laboratory support for method development and bioinformatics infrastructure across division and with external partners; (11) provides leadership for division informatics, data, and surveillance modernization initiatives; (12) prepares, reviews, and coordinates informational, scientific, and programmatic documents; (13) assures the overall quality of the science conducted by the division and provides guidance and new initiatives to support the enhancement of laboratory quality and bio-safety; (14) oversees and facilitates the division's scientific support to other groups within CDC and national and international public health and healthcare partners; (15) guides and facilitates efficient coordination and cooperation for administrative, programmatic, and scientific activities within the division and with other groups inside and outside of CDC; and (16) supports the division related to Management & Operations functions such as budget, program resource management, extramural administration, and human resource management.

Polio and Picornavirus Branch (CVGEC)

(1) Provides laboratory assistance, technical expertise and support for surveillance and related activities to monitor impact of vaccination and other prevention programs, and determine patterns of infection and disease due to poliovirus and other human picornaviruses; (2) provides laboratory support and technical expertise for epidemiologic and laboratory studies to define patterns and risk factors for infection, disease, and disease burden; (3) studies vaccine-related issues; (4) identifies and evaluates non-vaccine

prevention strategies; (5) provides laboratory consultation and technical expertise regarding use of vaccines and other measures to prevent infections to other NCs, collaborators, and partners; (6) provides laboratory and epidemiologic consultation and support and/or participates in investigations of national and international outbreaks of viral vaccine-preventable and enteric viral diseases; (7) provides laboratory leadership and technical expertise to develop science-based statements to Global Polio Eradication Initiative, ACIP, and other groups to support the development and evaluation of immunization practices and policies in the United States and internationally; (8) provides epidemiology and laboratory consultation and support and/or participates in investigations of national and international outbreaks of viral diseases, and recommends appropriate control measures; (9) provides scientific leadership and advice, in both epidemiologic and laboratory areas; (10) provides support for surveillance and epidemiologic studies and maintains reference/diagnostic services and expertise; (11) conducts studies of immunology and pathogenesis of disease and the biology, biochemical, genetic, and antigenic characteristics of the agents; (12) develops, evaluates, and improves diagnostic methods and reagents, transfers assays and techniques to national and international public health laboratories, and provides and supports training for laboratorians; (13) facilitates and participates in the development and evaluation of antiviral compounds, vaccines, and vaccination programs; (14) responds to and assists internal and external partners on other public health problems of national and international significance as needed; and (15) serves as the National Reference Laboratory (poliovirus and enteroviruses) and World Health Organization (WHO) Global Polio Specialized Reference Laboratory.

Viral Vaccine-Preventable Diseases Branch (CVGED)

(1) Conducts surveillance to determine patterns of infection and disease, provides laboratory assistance, technical expertise, and support for surveillance and related activities to monitor the impact of vaccination on the prevention of viral disease; (2) conducts epidemiologic and laboratory studies to define patterns of and risk factors for infection, disease, and disease burden; (3) estimates vaccine effectiveness, evaluates other aspects of immunization practices; (4) identifies and evaluates non-vaccine prevention strategies; (5) provides epidemiological and laboratory expertise and technical support to other NCs, collaborators, and partners across center working groups on vaccines and other prevention strategies; (6) supports the development of vaccine practices and policies by providing consultation and epidemiologic and laboratory expertise to other federal agencies, state health departments, ministries of health, WHO, Pan American Health Organization (PAHO), private industry, academia, and other governmental organizations on viral vaccine-preventable diseases, and on the use of vaccines and other measures to prevent infections; (7) provides epidemiologic and laboratory consultation and support and/or participates in investigations of national and international outbreaks of viral vaccine-preventable diseases and recommends appropriate control measures; (8) assists internal and external partners on other public health problems of national and international significance; (9) provides scientific leadership and advice, analyzes available data, and develops science-based statements for viral vaccines to the ACIP and other groups to support the development and evaluation of immunization practices and policies in the United States and internationally; (10) responsible for human papilloma virus (HPV), measles, mumps, rubella (MMR), zoster, and varicella vaccine policy in the United States by working with ACIP; (11) provides and supports public health training; (12) responds to public inquires and prepares communication materials; (13) works with health economists to determine cost effectiveness of vaccination strategies; (14) provides laboratory support for surveillance and epidemiologic studies and maintains reference and diagnostic services and expertise; (15) assists in investigation of adverse events following vaccination; (16) conducts studies of immunology and pathogenesis of disease and the biological, biochemical, genetic, and antigenic characteristics of viral agents; (17) develops, evaluates, and improves diagnostic methods and reagents; (18) transfers assays and techniques to other public health laboratories; (19) provides and supports laboratory training; (20) serves as the National Reference Laboratory for MMR, and varicella zoster virus and the PAHO Regional and WHO Global Specialized Laboratory for measles and rubella; (21) collaborates with CDC's HPV laboratory in conducting epidemiologic investigations; (22) facilitates and participates in the development and evaluation of vaccines, and vaccination programs; and (23) conducts studies to measure the immune response to viral vaccines and population immunity.

Viral Gastroenteritis Branch (CVGEE)

(1) Provides epidemiologic and laboratory assistance to studies and related activities to better understand the evolution, (molecular) epidemiology and immunity of rotavirus, norovirus, and other gastroenteritis viruses; (2) provides consultation on the safety and impact of rotavirus vaccination and other prevention programs (rotavirus, norovirus); (3) provides consultation and technical assistance to state and local health departments to monitor the burden of disease and epidemiology of gastroenteritis virus infections; (4) provides consultation and support on the research and development of new rotavirus vaccines and other prevention technologies; (5) provides consultation, support and/or participates in investigations of national and international outbreaks of viral vaccine-preventable and other enteric viral diseases, and recommends appropriate control measures; (6) provides scientific leadership and advice, analyzes available data, and develops science-based statements for rotavirus vaccines to ACIP and other groups to support the development and evaluation of immunization practices and policies in the United States and internationally; (7) provides and supports public health training; (8) responds to and assists internal and external partners on other public health problems of national and international significance, as needed; (9) serves as the National Reference Laboratory for rotavirus, norovirus and other agents of viral gastroenteritis; and (10) serves as the WHO Global Reference Center for Rotavirus and other agents of viral gastroenteritis.

Division of Bacterial Diseases (DBD) (CVGG)

DBD prevents and controls illness and death from vaccine-preventable and other respiratory bacterial diseases, in the United States and worldwide, through leadership in epidemiologic and laboratory science and vaccine policy. DBD plays a critical role in outbreak response, surveillance and epidemiologic research, laboratory diagnosis and pathogen characterization, and vaccine development, and provides scientific support for development of vaccine policy and public health guidance to control vaccine-preventable and other respiratory bacterial diseases. In carrying out its mission, DBD: (1) Conducts and assists state and local

health departments to conduct surveillance, including surveillance for antimicrobial resistance in the bacteria under the division's purview, and prepares and distributes surveillance information; (2) conducts epidemiologic and laboratory studies to define etiology, patterns of disease, disease burden, and risk factors; determines safety, effectiveness, and cost effectiveness of vaccines, updates immunization policy, and evaluates other aspects of immunization practices; and identifies and evaluates other (non-vaccine) prevention strategies; (3) provides consultation on the use of bacterial vaccines and other measures to prevent infections; (4) participates, provides consultation, and supports investigations of outbreaks, epidemics, and other public health problems in the United States and internationally, and recommends and evaluates appropriate control measures; (5) provides scientific leadership for development and evaluation of immunization policy related to vaccines in the United States by compiling and analyzing information on vaccine-preventable diseases and helping prepare statements on bacterial vaccines for the ACIP and other groups to support the development and evaluation of immunization policy; in international settings, provides guidance and technical expertise on vaccine-preventable disease policy development; (6) provides laboratory support for surveillance and epidemiologic studies and reference diagnostic services, to state and local health departments, other federal agencies, and national and international health organizations; (7) conducts studies of the biology, biochemical, genetic, and antigenic characteristics, immunology, and pathogenesis of disease; (8) develops, analyzes, and improves diagnostic methods and reagents; (9) facilitates development and evaluation of immunologic compounds, vaccines, and vaccination programs; (10) provides intramural and extramural assistance with professional training; (11) assists internal and external partners with other public health problems of national and international significance when needed; (12) provides technical support to state immunization programs for all aspects of vaccine-preventable diseases and their vaccines; (13) provides leadership in vaccine science; and (14) supports CDC's ISO in vaccine safety risk assessment and leadership in vaccine safety risk management.

DBD Office of the Director (CVGG1)

(1) Directs, coordinates, and manages the programs and activities of the division; (2) provides leadership and guidance on policy, program planning and development, program management, and operations; (3) coordinates or assures coordination with the appropriate CDC, DDID, and NCIRD offices on administrative and program matters; (4) reviews, prepares, and coordinates congressional testimony and briefing documents related to bacterial respiratory and vaccine-preventable diseases, and analyzes programmatic and policy implications of legislative proposals; (5) serves as CDC, DDID, and NCIRD's primary internal and external communications contact regarding bacterial respiratory and vaccine-preventable disease issues; (6) advises CDC, DDID, and NCIRD on policy and communications matters concerning the division's programs and activities; (7) assures the overall quality of the science conducted by the division; (8) coordinates division activities on cross-cutting agency initiatives; (9) guides and coordinates division laboratories to implement quality management systems and maintain safety; (10) guides and facilitates efficient coordination and cooperation for administrative, programmatic, and scientific activities within the division, and with other groups in and outside of CDC; (11) provides statistical consultation for epidemiologic and laboratory research studies conducted by the division, including developing new methods for statistical applications; and (12) provides a center of excellence for the study of immunologic response to infection, vaccination, and therapeutic interventions against bacterial diseases.

Respiratory Diseases Branch (CVGGB)

(1) Provides assistance in control of epidemics and works to improve control and prevention of respiratory and other syndromes caused by Streptococcus pneumoniae, group A and group B streptococci, and atypical respiratory bacteria (Legionella, Mycoplasma, and Chlamydia species), as well as community-acquired drug resistant bacterial infections, community-acquired pneumonia, otitis media, and neonatal sepsis; (2) develops, implements, and evaluates prevention methods for these diseases, including vaccines and non-vaccine strategies; (3) provides consultation and support to domestic and international partners on use of vaccines and other prevention measures to reduce bacterial respiratory diseases; (4) coordinates activities within and outside the division related to Active Bacterial Core surveillance with the Emerging Infections Program states, and assists with coordination of other surveillance platforms that include bacterial respiratory diseases; (5) provides reference and diagnostic activities for respiratory bacterial diseases and for the identification of unknown gram positive cocci; (6) develops and evaluates new diagnostic methods for bacterial respiratory pathogens; (7) develops, maintains, and implements genetic analyses of bacteria to enhance surveillance programs, outbreak investigations, and public health research; and (8) collaborates with other CDC groups, state and federal agencies, ministries of health, WHO, PAHO, private industry, academia, and other governmental organizations involved in public health.

Meningitis and Vaccine Preventable Diseases Branch (CVGGC)

(1) Provides assistance in control of endemic and epidemic disease and exploits opportunities to improve control and prevention of bacterial illness including: meningococcal disease, Haemophilus influenzae infections, diphtheria, pertussis, tetanus, and bacterial meningitis syndrome; (2) provides reference and diagnostic activities for agents causing these diseases; (3) provides cross-cutting vaccine responsibilities for DBD and develops, implements, and evaluates prevention strategies for these bacterial diseases; (4) develops, implements, and evaluates vaccines and vaccine candidates for these bacterial diseases; (5) conducts surveillance and epidemiological research for meningococcal disease, H. influenzae infections, diphtheria, pertussis, tetanus, and bacterial meningitis syndrome; (6) maintains WHO Collaborating Center for Control and Prevention of Epidemic Meningitis; and (7) collaborates with other CDC groups, state and federal agencies, ministries of health, WHO, PAHO, private industry, and other governmental organizations involved in public health.

Coronavirus and Other Respiratory Viruses Division (CRVD) (CVGH)

CRVD prevents disease, disability, and death through immunization and control of coronaviruses, respiratory, and other related viral diseases. In carrying out this mission, CRVD: (1) Conducts surveillance and related activities to determine patterns of infection and disease and impact of prevention programs; (2) supports and provides technical assistance to state and local health departments to conduct surveillance and related activities; (3) conducts epidemiologic and laboratory studies to define patterns of, and risk factors for, infection, disease, and

disease burden; (4) estimates vaccine effectiveness, determines cost effectiveness of vaccines, and evaluates other aspects of immunization programs; (5) identifies and evaluates non-vaccine prevention strategies and provides epidemiologic and laboratory expertise to other NCs, collaborators, and partners on vaccination and other prevention strategies; (6) provides consultation on viral vaccine preventable, and enteric diseases, and the use of vaccines and other measures to prevent infections; (7) provides consultation and support and/or participates in investigations of respiratory viral diseases domestically and internationally, and recommends appropriate control measures; (8) analyzes and synthesizes available data to support the development and evaluation of immunization practices and policies domestically and internationally; (9) provides laboratory support for surveillance and epidemiologic studies and maintains reference/diagnostic services and expertise; (10) conducts studies of immunology and pathogenesis of disease and the biologic, biochemical, genetic and antigenic characteristics of the agents; (11) develops, evaluates, and improves diagnostic methods and reagents; (12) transfers assays and techniques to other public health laboratories; (13) facilitates and participates in the development and evaluation of antiviral compounds, vaccines, and vaccination programs; (14) provides and supports public health training; (15) responds to and assists internal and external partners on other public health problems of national and international significance, as needed; (16) provides technical support to state immunization programs for all aspects of vaccine-preventable diseases and their vaccines; (17) provides leadership in vaccine science; and (18) supports CDC's ISO in vaccine safety risk assessment and leadership in vaccine safety risk management.

CRVD Office of the Director (CVGH1)

(1) Manages, directs, coordinates and monitors the activities of the division; (2) provides overall guidance and direction for the division's epidemiologic, surveillance, research, laboratory, outbreak response, and other scientific and immunization-related activities; (3) sets short- and long-term programmatic goals and outlines strategic achievements in alignment with NCIRD priorities; (4) monitors and evaluates progress of division- and branch-led programs, promotes program improvements, and facilitates strategic decision-making; (5) provides analysis and facilitates strategic use of public health policies and operational procedures for continuous risk management and operational efficiencies; (6) identifies needs and allocates resources for ongoing and new initiatives and assigns responsibilities for their development; (7) communicates division public health messages to internal and external audiences via conventional media, web, social media, professional organizations, and other venues, to maximize impact of division programs; (8) provides leadership and guidance in policy formulation, partnerships, program planning and development, program management, and operations of the division; (9) provides division leadership, expertise, and technical collaboration for the application of statistics, economics, operations research, geospatial analysis, other quantitative sciences, informatics, and data management to prevent disease, disability and death through immunization and control of enteric, and other viral diseases; (10) provides next-generation sequencing laboratory support for method development and bioinformatics infrastructure across division and with external partners; (11) provides leadership for division informatics, data, and surveillance modernization initiatives; (12) prepares, reviews, and coordinates informational, scientific, and programmatic documents; (13) assures the overall quality of the science conducted by the division and provides guidance and new initiatives to support the enhancement of laboratory quality and bio-safety; (14) oversees and facilitates the division's scientific support to other groups within CDC and national and international public health and healthcare partners; (15) guides and facilitates efficient coordination and cooperation for administrative, programmatic, and scientific activities within the division and with other groups inside and outside of CDC; (16) coordinates program and Division-level pandemic preparedness activities related to current and known threats such as COVID–19 and preparedness for future or emerging threats; (17) advises NCIRD and CDC leadership in the areas of pandemic preparedness and response and global health related to respiratory and vaccine preventable diseases including establishing CRVD priorities, promoting science, policies, and new programs; (18) coordinates across NCIRD, CDC, and with partners to plan for and exercise responses to pandemic and other threats; and (19) supports the division and all branches through a management and operations hub, providing functional support such as budget, program resource management, extramural administration, and human resource management.

Coronavirus and Other Respiratory Viruses Laboratory Branch (CVGHB)

(1) Designs and conducts studies of the biological, genetic, and antigenic characteristics of non-influenza respiratory viruses including SARS–CoV–2, the virus the causes COVID–19, and the immunology and pathogenesis of associated diseases; (2) designs and conducts laboratory-related activities to support surveillance and epidemiologic studies, and to monitor impact of vaccination and other respiratory virus prevention measures; (3) provides laboratory support and technical expertise for studies to define patterns and risk factors for respiratory virus infections, diseases, and disease burden; (4) develops, evaluates, and improves diagnostic methods and reagents, conducts strain characterization for molecular epidemiology, and provides technology transfer support to public health laboratories for known and unknown viral etiologic agents for respiratory diseases of human and animal origin; (5) characterizes immune correlates of protection to advise partners on vaccine program policies; (6) determines virus and host factors that impact virulence and transmission of SARS-CoV–2 and other respiratory viruses; (7) facilitates and participates in the evaluation of respiratory virus countermeasures including prophylactics, therapeutics, and vaccines; (8) provides laboratory consultation and support for investigation of domestic and international respiratory viral disease outbreaks; (9) serves as CDC technical lead for providing guidance to WHO and key partners on classification of viral variants, performing variant risk assessments to inform COVID–19 vaccination policies, as well as in supporting platforms for genomic monitoring of coronaviruses and other respiratory viruses; (10) provides laboratory leadership and technical expertise to develop science-based statements to ACIP and other domestic and international collaborators to support the development and evaluation of practices, policies, and vaccine considerations for SARS-CoV–2 and other respiratory viruses; and (11) provides technical assistance to international partners to conduct comprehensive antigenic, phenotypic, genotypic, structural, and evolutionary characterization of SARS-CoV2 and other respiratory viruses.

Coronavirus and Other Respiratory Viruses Surveillance and Prevention Branch (CVGHC)

(1) Conducts surveillance and related activities to monitor patterns of respiratory virus infection and disease incidence and assess impact of interventions; (2) provides technical expertise and support to state and local health departments for surveillance and related activities; (3) provides expertise and support on data analysis and visualization of respiratory virus surveillance data for internal and external use; (4) performs applied modeling analyses to characterize disease burden and impact of interventions; (5) conducts vaccine effectiveness evaluations for coronaviruses and other respiratory viruses to support the development and evaluation of immunization practices and policies; (6) analyzes and synthesizes available data and develops science-based statements for potential respiratory viral vaccines to support the development and evaluation of immunization practices and policies related to coronaviruses and other respiratory virus vaccines by ACIP and other groups; (7) Coordinates quantitative science and data management planning, policy development, and project monitoring and evaluation; (8) designs, develops and conducts statistical, economic, cost, resource allocation, geospatial and other analyses and models; (9) develops data management methodologies and strategies for division activities and programs; and (10) collaborates with scientists, program experts, and senior public health officials throughout the division to implement strategies, models, and methodologies in support of enteric, and related viral disease research, surveillance, and prevention programs.

Coronavirus and Other Respiratory Viruses Epidemiology Branch (CVGHD)

(1) Characterizes the spectrum of disease and sequelae from respiratory virus infections, including, but not limited to multisystem inflammatory syndrome and post-COVID conditions, the burden and incidence of sequelae, and risk factors for sequelae; (2) characterizes transmission dynamics and risk factors for coronavirus and other respiratory virus infections; (3) characterizes acute and long-term immunity to understand correlates of protection; (4) conducts and supports field epidemiologic studies to characterize unusual disease clusters and unexpected disease manifestations or trends of viral respiratory diseases; (5) provides consultation and technical assistance to state and local health departments and others in the investigation, management, mitigation and control of viral respiratory disease clusters and outbreaks; (6) evaluates the implementation, effectiveness and impact of community-level mitigation measures; (7) develops and updates public health guidance on community-based non-pharmaceutical interventions for the prevention and control of respiratory viruses, such as masking, screening, quarantine, and isolation; and (8) provides consultation and technical support on clinical management and secondary prevention for respiratory viral diseases.

Global Coronavirus and Other Respiratory Viruses Branch (CVGHE)

(1) Implements global respiratory virus surveillance including supporting enhanced epidemiologic and laboratory capacity and data analyses to improve understanding of the epidemiological characteristics, trends, and emergence of respiratory pathogens; (2) builds capacity for global surveillance and epidemic intelligence to detect and respond to respiratory events including those of pandemic potential; (3) assists global partners in pandemic preparedness activities; (4) provides support and/or participates in investigations of international respiratory outbreaks including implementing appropriate control measures; (5) conducts research studies with global partners, division, and agency stakeholders to better understand burden of disease, impact of prevention programs, and molecular epidemiology of respiratory viruses; (6) provides technical assistance to global partners to conduct or support comprehensive antigenic, phenotypic, genotypic, structural, and evolutionary characterization of SARS–CoV–2 and respiratory viruses; and (7) provides expertise to global partners in the development of evidence-based surveillance standards and methods.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–02930 Filed 2–10–23; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 117–286. 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–PS23–001, Increasing PrEP Use Among Disproportionately Affected Populations in the United States and RFA–PS23–003, Exploring Preferences for Long-Acting Antiretroviral Therapies (LA–ART) in a Community-Based Sample of Priority Populations Living with HIV Who are Disproportionately Affected.

Date: May 11–12, 2023.

Time: 10 a.m.–5 p.m. (EDT).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329, Telephone: (404) 718–8833, Email: *GAnderson@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. 2023–02970 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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 117–286. 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)—PS23–004, Long-Acting Injectables for the Treatment of HIV in Non-Clinic Community-Based Settings and PS23–006, Identifying and Addressing Historical and Structural Drivers of Medical Mistrust among Hispanic/Latino Gay, Bisexual and Other Men Who Have Sex with Men (HLMSM) for HIV Prevention.

Date: April 26–27, 2023.

Time: 10 a.m.–5 p.m. (EDT).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329, Telephone: (404) 718–8833, Email: *GAnderson@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. 2023–02972 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee; Notice of Charter Renewal

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

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) announces the renewal of the charter of the Healthcare Infection Control Practices Advisory Committee (HICPAC).

FOR FURTHER INFORMATION CONTACT: Sydnee Byrd, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8039; Email: *HICPAC@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014. This charter has been renewed for a two-year period through January 19, 2025.

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. 2023–02969 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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 117–286. 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)—SIP23–001, Effective Community Conversations for Influenza and COVID–19 Vaccine Uptake.

Date: May 2, 2023.

Time: 11 a.m.–3 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–3, Atlanta, Georgia 30341–3717; Telephone: (770) 718–7664; Email: *CBarrett@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. 2023–02973 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 117–286. 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–PS23–002, Enhancing Telehealth Strategies to Support Retention and Adherence to Antiretroviral Therapy (ART) and RFA–PS23–005, Expanding Rapid Initiation of Antiretroviral Therapy in Non-traditional Settings: Emergency Department.

Date: May 24–25, 2023.

Time: 10 a.m.–5 p.m. (EDT)

Place: Teleconference, Centers for Disease Control and Prevention, Room 1077, 8 Corporate Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia 30329, Telephone: (404) 718–8833, Email: *GAnderson@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. 2023–02971 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics; Notice of Charter Renewal

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

ACTION: Notice of charter renewal.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the renewal of the charter of the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS).

FOR FURTHER INFORMATION CONTACT: Rebecca Hines, M.H.S., Designated Federal Officer, Board of Scientific Counselors, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Mailstop P–08, Hyattsville, Maryland 20782; Telephone: (301) 458–4715; Email: *RSHines@cdc.gov.*

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014. This charter has been renewed for a two-year period through January 19, 2025.

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. 2023–02968 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Moving Forward Reorganization

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

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), an agency within the Department of Health and Human Services (HHS), announces a reorganization. The CDC Director is modernizing the agency's organizational structure to better position the agency to respond to and tackle future public health threats.

DATES: This reorganization was approved by the Secretary of HHS on January 24, 2023, and became effective February 8, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (CDC) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, amended most recently at 87 FR 51670–51675, dated August 23, 2022) is amended to reflect the reorganization of CDC. Specifically, the changes are as follows:

Under Part C, Section C–B, Organization and Functions, delete and/or update functional statements for CDC in their entirety and replace with the following:

I. Under Part C, Section C–B, Organization and Functions, the following organizational units are deleted in their entirety:

- Office of the Associate Director for Global Health Coordination (CAE)
- Deputy Director for Public Health Service and Implementation Science (CB)
- Center for Global Health (CBB)
- Center for Preparedness and Response (CBC)
- Center for State, Tribal, Local and Territorial Support (CBD)
- Office of Minority Health and Health Equity (CBE)
- Deputy Director for Public Health Science and Surveillance (CP)
- Office of Science (CPP)
- Office of Laboratory Science and Safety (CPQ)

- National Center for Health Statistics (CPC)
- Center for Surveillance, Epidemiology and Laboratory Services (CPN)
- Deputy Director for Non-Infectious Diseases (CU)
- National Center on Birth Defects and Developmental Disabilities (CUB)
- National Center for Chronic Disease Prevention and Health Promotion (CUC)
- National Center for Environmental Health (CUG)
- National Center for Injury Prevention and Control (CUH)
- Deputy Director for Infectious Diseases (CV)
- National Center for Immunization and Respiratory Diseases (CVG)
- National Center for Emerging and Zoonotic Infectious Diseases (CVL)
- National Center for HIV, Viral Hepatitis, STD, and TB Prevention (CVJ)

II. Under Part C, Section C–B, Organization and Functions, make the following changes:

- Retitle the Office of the Director to the Immediate Office of the Director (CA)
- Retitle the Office of the Associate Director for Policy and Strategy to the Office of Policy, Performance, and Evaluation (CAQ)
- Retitle the Office of the Associate Director for Communication to the Office of Communications (CAU)

III. Under Part C, Section C–B, Organization and Functions, insert the following:

- Office of Readiness and Response (CAD)
- Center for Forecasting and Outbreak Analytics (CADB)
- Office of Health Equity (CAG)
- Office of Science (CAH)
- Office of Public Health Data, Surveillance, and Technology (CAK)
- National Center for Health Statistics (CAKB)
- Office of Laboratory Science and Safety (CAN)
- National Center for Injury Prevention and Control (CE)
- National Center on Birth Defects and Developmental Disabilities (CF)
- National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce (CH)
- National Center for Immunization and Respiratory Diseases (CJ)
- National Center for HIV, Viral Hepatitis, STD and TB Prevention (CK)
- National Center for Chronic Disease Prevention and Health Promotion (CL)
- National Center for Environmental Health (CN)
- National Center for Emerging and Zoonotic Infectious Diseases (CR)
- Global Health Center (CW)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Dated: February 7, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–02929 Filed 2–10–23; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–23–0728]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Notifiable Diseases Surveillance System (NNDSS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 16, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Notifiable Diseases Surveillance System (OMB Control No. 0920–0728, Exp. 7/31/2025)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS. This Revision includes requests for approval to: (1) receive case notification data for Carbapenemase-Producing Organisms

(CPO), a new nationally notifiable condition; (2) receive case notification data for Strongyloidiasis, a new condition under standardized surveillance (CSS); and (3) receive new disease-specific data elements for Brucellosis, Candida auris, CPO, Carbon Monoxide Poisoning, Hepatitis, Leptospirosis, Melioidosis, and Viral Hemorrhagic Fevers.

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: public health departments in every U.S. state, New York City, Washington, DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Over 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of CDC's Data Modernization Initiative (DMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for CPO and Strongyloidiasis; and disease-specific data elements for Brucellosis, Candida auris, CPO, Carbon Monoxide Poisoning, Hepatitis, Leptospirosis, Melioidosis, and Viral Hemorrhagic Fevers.

The estimated annual burden for the 257 respondents is 18,594 hours. The total burden hours increased from 18,294 to 18,594 since the last revision because there were more disease-specific data elements added in this revision as compared to the last revision.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	Weekly (Automated)	50	52	20/60
States	Weekly (Non- automated)	10	52	2
States	Weekly (DMI Implementation)	50	52	4
States	Annual	50	1	75
States	One-time Addition of Diseases and Data Elements	50	1	6
Territories	Weekly (Automated)	5	52	20/60
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60
Territories	Weekly (DMI Implementation)	5	52	4
Territories	Annual	5	1	5
Territories	One-time Addition of Diseases and Data Elements	5	1	6
Freely Associated States	Weekly (Automated)	3	52	20/60
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60
Freely Associated States	Annual	3	1	1
Freely Associated States	One-time Addition of Diseases and Data Elements	3	1	6
Cities	Weekly (Automated)	2	52	20/60
Cities	Weekly (Non-automated)	2	52	2
Cities	Weekly (DMI Implementation)	2	52	4
Cities	Annual	2	1	75
Cities	One-time Addition of Diseases and Data Elements	2	1	6

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–02945 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

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

ACTION: Notice of meeting.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person listed in the addresses section below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on March 9, 2023, from 11 a.m. to 1 p.m., EDT. Written comments must be received on or before March 2, 2023.

ADDRESSES: You may submit comments by mail to: Dr. Rashaun Roberts, National Institute for Occupational Safety and Health (NIOSH), CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226; Telephone: (513) 533–6800; Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2022, and will terminate on March 22, 2024.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on the following: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; and Plans for the April 2023 Advisory Board Meeting. Agenda items are subject to change as priorities dictate.

For additional information, please contact 1–800–232–4636 (toll free).

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. 2023–02967 Filed 2–10–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1800–NC]

Inflation Reduction Act (IRA) Initial Program Guidance; 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' initial guidance for the Medicare Part B and Part D Prescription Drug Inflation Rebate Program for the implementation of the Inflation Reduction Act. CMS will be releasing additional Inflation Reduction Act-related guidance; all can be viewed on the dedicated Inflation Reduction Act section of the CMS website at *https://www.cms.gov/inflation-reduction-act-and-medicare/.*

DATES: Comments must be received by March 11, 2023.

ADDRESSES: Written comments should be sent to *IRARebateandNegotiation@cms.hhs.gov* with the relevant subject line, either ''Medicare Part B Inflation Rebate Comments'' or ''Medicare Part D Inflation Rebate Comments.''

SUPPLEMENTARY INFORMATION: The Inflation Reduction Act was signed into law on August 16, 2022. Section 11101 of the Inflation Reduction Act added a new section 1847A(i) to the Social Security Act (herein referred to as ''the Act,''), which establishes a requirement for manufacturers to pay Medicare Part B rebates for single source drugs and biological products with prices that increase faster than the rate of inflation for a calendar quarter to the Federal Supplementary Medical Insurance Trust Fund, and provides for lower Part B beneficiary cost sharing on these drugs and biologicals.

Section 11102 of the Inflation Reduction Act added a new section 1860D–14B to the Act, which establishes a requirement for manufacturers to pay rebates to the

Federal Supplementary Medical Insurance Trust Fund for certain Part D drugs when prices increase faster than the rate of inflation for each 12-month applicable period. Collectively, this program to implement these rebates is referred to as the Medicare Prescription Drug Inflation Rebate Program, or the Inflation Rebate Program.

CMS will be releasing additional Inflation Reduction Act-related guidance; all can be viewed on the dedicated Inflation Reduction Act section of the CMS website at *https://www.cms.gov/inflation-reduction-act-and-medicare/.*

To obtain copies of initial guidance and other Inflation Reduction Act-related documents, please access the CMS Inflation Reduction Act website by copying and pasting the following web address into your web browser: *https://www.cms.gov/inflation-reduction-act-and-medicare.* If interested in receiving CMS Inflation Reduction Act updates by email, individuals may sign up for CMS Inflation Reduction Act's email updates at *https://www.cms.gov/About-CMS/Agency-Information/Aboutwebsite/EmailUpdates.*

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: February 8, 2023.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–02974 Filed 2–9–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0366]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with certain FDA advisory committee activities.

DATES: Either electronic or written comments on the collection of information must be submitted by April 14, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–0366 for ''FDA Advisory Committees.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601

Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Advisory Committees; Information Collection Activities

OMB Control No. 0910–0833—Revision

This information collection supports certain FDA advisory committee administrative activities. FDA advisory committees are established to advise or make recommendations on matters of public health that come before the Agency. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 3, Pub. L. 92–463) defines what constitutes an ''advisory committee'' and provides general procedures to follow for the operation of advisory committees. In addition, FACA is designed to assure that Congress and the public are kept informed with respect to the purpose, membership, and activities of advisory committees. FDA regulations at 21 CFR part 14 also establish procedures applicable to its advisory committees.

FACA does not specify the manner in which advisory committee members and staff must be appointed. (See generally 5 U.S.C. App. 2. See also, 41 CFR 102–3.105, and 102–3.130(a).) FDA's regulations, however, specify that the Commissioner ''will publish one or more notices in the **Federal Register** each year requesting nominations for voting members of all existing standing advisory committees'' (§ 14.82(a) (21 CFR 14.82(a))). Nominations must specify the committee for which the nominee is recommended; include a complete curriculum vitae (CV); state that the nominee is aware of the nomination and willing to serve; and state that the nominee appears to have no conflict of interest that would preclude membership (§ 14.82(c)). To promote transparency, consistent with FDA and General Services Administration (GSA) policy (see GSA regulations encouraging Agencies to ''practice openness'' and suggesting that ''agencies may wish to explore the use of the internet to post advisory committee information . . .'' 41 CFR 102–3.95(d)), and pursuant to a settlement agreement in the case *Public Citizen Foundation, Inc.* v. *Food & Drug Administration, et al.,* No. 16–cv–781 (D.D.C.), FDA is also seeking consent from nominees for FDA to publicly post their CVs in the event they are selected to serve on an FDA advisory committee.

We are revising the information collection to include reporting activities associated with Guest Speakers. Guest Speakers are individuals who are occasionally asked to present technical and scientific data pertaining to matters being considered by an FDA advisory committee. Guest Speakers are not Government employees or are special Government employees participating in a non-official, non-governmental capacity. Guest Speakers are therefore not subject to the conflict-of-interest statutes and regulations, including appearances of a conflict of interest (5 CFR 2635.502).

Seeking transparency and openness, the Agency has determined it would be appropriate policy to request that a Guest Speaker voluntarily disclose financial interests and professional relationships to determine their eligibility to give a presentation at an advisory committee meeting.[1] [2] Disclosures reported to the Agency by Guest Speakers that are related to a meeting topic will be disclosed to the public as part of the conflict-of-interest statement at the beginning of a meeting. This will allow the committee to objectively evaluate the Guest Speaker's presentation.

Because not all Guest Speakers are current Federal Government or Special Government employees bound by applicable statutory requirements and implementing regulations that govern financial disclosure and other conflicts of interest, we are instituting procedures in this regard. However, we intend to utilize FORM OGE 450, ''Office of Government Ethics Form'' and/or Form FDA 3410, to determine eligibility for Federal Government employees or special Government employees participating in an official governmental capacity to give a presentation to an advisory committee. To assist respondents with the reporting elements associated with these forms, we have prepared the procedural guidance document for the public, FDA advisory committee members, and FDA staff entitled ''Public Availability of Advisory Committee Members' Financial Interest Information and Waivers'' (March 2014). The guidance is available for download at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/public-availability-advisory-committee-members-financial-interest-information-and-waivers* and was issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provides for comment at any time. For submission of Guest Speaker forms we have prepared a procedural staff manual guide (SMG), ''Guidelines for Clearance of Conflicts of Interest of Speakers Participating in Particular Matters Before an Advisory Committee.'' SMGs are available for download at *https://www.fda.gov/about-fda/reports-manuals-forms/staff-manual-guides.*

Accordingly, we are requesting approval for information collection associated with FDA advisory committee membership nominations, as well as collection associated with determining the eligibility of Guest Speakers, as discussed in this supporting statement.

[1] A professional relationship is a relationship (not including a transactional business relationship) with a firm, association, society, supervisor, partner, colleague, mentor, or other persons in an individual's professional network. These relationships include, but are not limited to, employer—employee; professional—client; society—professional; or professional—professional.

[2] Although screening is voluntary for Guest Speakers, as a policy matter, FDA generally conditions a Guest Speaker's participation in the meeting upon completion of the screening form because an assessment of potentially disqualifying interests can only be completed if the necessary information requested on the form is disclosed to the Agency.

Based on a review of data, we received 258 nominations for membership to FDA advisory committees in fiscal year (FY) 2018; 333 nominations in FY 2019; 254 nominations in FY 2020; 289 nominations in FY 2021; and 408 nominations in FY 2022. By averaging the number of nominations received annually over the past 5 years, we estimate there are approximately 308 respondents to the information collection. We estimate it takes respondents 15 minutes to complete an initial nomination, where accompanying documentation is already available or has been prepared in advance by respondents. Multiplying 15 minutes (0.25) by the number of respondents to the information collection (308) equals 77 annual burden hours.

We have also included a burden estimate for members who currently serve on FDA advisory committees who must submit an updated CV and a completed consent form annually. Currently, there are 532 authorized positions for advisory committee members. While many positions are filled, there are generally about 15 percent of member positions vacant, which leaves an average of 452 respondents. The request for the updated CV and consent form will be made through email communications by the Designated Federal Officer of the committee. The burden to the respondent is anticipated to be the same as the burden for new nominations. We estimate each response will require 15 minutes (0.25) for a total of 113 annual hours.

To account for burden attendant to reporting information so that FDA may determine respondents' eligibility to serve as Guest Speakers, we include only those individuals who are not Federal Government employees or who are special Government employees acting in a non-official, non-governmental capacity. Based on historical information, approximately 40 Guest Speakers present at advisory committee meetings annually. The request for the form will be made through email communications by the Designated Federal Officer of the committee. We estimate each response will require 15 minutes (0.25) for a total of 10 annual hours.

We estimate the burden of the collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 14; subpart E—members of advisory committees activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Advisory Committee Membership Nominations	308	1	308	0.25 (15 minutes)	77
Member Submission of Updated Information	452	1	452	0.25 (15 minutes)	113
Guest Speakers—Eligibility Form/Attestation	40	1	40	0.25 (15 minutes)	10
Total			800		200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As a result of these changes and adjustments, the information collection reflects a decrease in membership nominations, an increase in submissions of updated information, and submission of Guest Speaker forms for an overall increase of 355 responses and 88 hours annually.

Dated: February 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02961 Filed 2–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0112]

Considerations for Long-Term Clinical Neurodevelopmental Safety Studies in Neonatal Product Development; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Considerations for Long-Term Clinical Neurodevelopmental Safety Studies in Neonatal Product Development.'' This guidance is intended to provide a framework for considering whether and what type of long-term neurologic, sensory, and/or developmental evaluations could be useful in supporting a determination of safety of a regulated product for use in neonates, and which domains of assessment may be most pertinent. Although short-term safety evaluations may be acceptable for adults or other populations, such short-term evaluations may not identify important adverse events in the neonatal population, as latent effects may follow early-life exposures and drug treatment during the neonatal period coincides with a time of critical growth and physiologic development. Consideration of these potential long-term neurologic, sensory, and development effects in the neonatal population early in a drug development program will help ensure a safer product.

DATES: Submit either electronic or written comments on the draft guidance by April 14, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0112 for ''Considerations for Long-Term Clinical Neurodevelopmental Safety Studies in Neonatal Product Development; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to An Massaro, Office of Pediatric Therapeutics, Office of Clinical Policy and Programs, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 32, 5th Floor, Silver Spring, MD 20993–0002, 301–467–8507; Gerri Baer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993–0002, 240–402–2865; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Room 3128, Silver Spring, MD 20993–0002, 240–402–7911; Vasum Peiris, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993–0002, 301–796–6089. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: An Massaro, Office of Pediatric Therapeutics, Office of Clinical Policy and Programs, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 32, 5th Floor, Silver Spring, MD 20993–0002, 301–467–8507; Gerri Baer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993–0002, 240–402–2865; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, 240–402–7911; and Vasum Peiris, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993–0002, 301–796–6089.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Considerations for Long-Term Clinical Neurodevelopmental Safety Studies in Neonatal Product Development; Draft Guidance for Industry.''

Treatment with drugs, biological products, or devices, medical products (referred to as ''medical products'') during the neonatal period coincides with a time of critical growth and physiologic development. Although short-term safety evaluations may be acceptable for adults or other populations, such short-term evaluations may not identify important adverse events in the neonatal population, as latent effects may follow early-life exposures. Historically, most medical products used to treat neonates and young infants were not approved for use in these populations for the relevant indications, and thus long-term impacts were infrequently systematically evaluated.

Clinical investigators and sponsors of neonatal studies should consider and assess both the potential short- and long-term effects of an investigational therapy, whether novel or developed for a different indication. Prospectively designed long-term follow-up is helpful to understand medical product safety in growing and developing neonates.

Neonates should have the same access as other populations to drugs and biologics that have been adequately evaluated for optimal dosing, efficacy, and safety. There are unique conditions that occur in term or preterm neonates that will not have analogous development programs in older populations. As products are developed for unique neonatal conditions, it may be useful for novel development programs and first-in-human studies to occur in neonates, and these development programs should demonstrate long-term neurologic, sensory, and developmental safety. This guidance will discuss general, patient-specific and product-specific considerations ranging from neurodevelopmental screening through a comprehensive neurodevelopmental evaluation. It will also address what to measure in a risk assessment, when, and for how long. This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Considerations for Long-Term Clinical Neurodevelopmental Safety Studies in Neonatal Product Development; Draft Guidance for Industry.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if

it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information for submission of investigational new drug applications, 21 CFR part 312, have been approved under 0910–0014. The collections of information for submission of new drug applications, 21 CFR part 314, have been approved under 0910–0001. The collections of information for submission of biologic license applications, 21 CFR part 601, have been approved under 0910–0338. The collections of information for submission of premarket approval applications, 21 CFR part 807, subpart E; investigational device exemptions, 21 CFR part 812; premarket notifications, 21 CFR part 814, subparts A through E; humanitarian device exemptions, 21 CFR part 814, subpart H; and De Novo classification requests, 21 CFR part 860, subpart D, have been approved under OMB control numbers 0910–0120, 0910–0078, 0910–0231, 0910–0332, and 0910–0844, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02962 Filed 2–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–1104]

Determination That ARISTOSPAN (Triamcinolone Hexacetonide) Injectable Suspension, 20 Milligrams/Milliliter and 5 Milligrams/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 milligrams (mg)/milliliter (mL) and 5 mg/mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for triamcinolone hexacetonide injectable suspension, 20 mg/mL and 5 mg/mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Diana Pomeranz, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6288, Silver Spring, MD 20993–0002, 240–402–4654, *Diana.Pomeranz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to FDA's approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, is the subject of NDA 016466, held by Sandoz, Inc., and initially approved on July 29, 1969. ARISTOSPAN 20 mg/mL is indicated as adjunctive therapy for short-term administration (to tide the patient over an acute episode or exacerbation) in acute gouty arthritis, acute and subacute bursitis, acute nonspecific tenosynovitis, epicondylitis, rheumatoid arthritis, and synovitis of osteoarthritis. ARISTOSPAN 5 mg/mL is indicated for alopecia areata; discoid lupus erythematosus; keloids; localized hypertrophic, infiltrated, inflammatory lesions of granuloma annulare, lichen planus, lichen simplex chronicus (neurodermatitis), and psoriatic plaques; necrobiosis lipoidica diabeticorum; and cystic tumors of an aponeurosis or tendon (ganglia).

ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Medexus Pharma, Inc., submitted a citizen petition dated June 9, 2022 (Docket No. FDA–2022–P–1104), under 21 CFR 10.30, requesting that the Agency determine whether ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 5 mg/mL strength, that strength has also been discontinued. On our own initiative, we have also determined whether that strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that ARISTOSPAN (triamcinolone hexacetonide) injectable

suspension, 20 mg/mL and 5 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ARISTOSPAN (triamcinolone hexacetonide) injectable suspension, 20 mg/mL and 5 mg/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 7, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02984 Filed 2–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; High Risk Multi-Center Clinical Study Implementation and Planning Grant in the Area of Achalasia

Date: April 3, 2023.

Time: 12:45 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 7, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02978 Filed 2–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Chronic Dysfunction and Integrative Neurodegeneration Study Section, February 15, 2023, 08 a.m. to February 16, 2023, 07 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 which was published in the **Federal Register** on January 24, 2023, 88 FR 4193, Doc 2023–01308.

This meeting is being amended to change the location from Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015 to Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852. The meeting is closed to the public.

Dated: February 7, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02982 Filed 2–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications, contract proposals and repayment program discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, contract proposals and repayment program, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Member Special Emphasis Panel; Conflict: Developmental Biology.

Date: March 2, 2023.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Jagpreet Singh Nanda, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892, (301) 451–4454, *jagpreet.nanda@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Function, Integration, and Rehabilitation Sciences Members'' Special Emphasis Panel; Conflict.

Date: March 3, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Luis E. Dettin, Ph.D., MS, MA, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, (301) 827–8231, *luis_dettin@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Loan Repayment Program.

Date: March 6, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate loan Repayment Program.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of and Human Development, NIH, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Contraceptive Development Research Center.

Date: March 27, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Jagpreet Singh Nanda, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892, (301) 451–4454, *jagpreet.nanda@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Prevention and Treatment through a Comprehensive Care Continuum for HIV-affected Adolescents in Resource Constrained Settings Implementation Science Network (PATC^{3}H–IN) Clinical Research Centers.

Date: March 29, 2023.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2121D Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Cathy Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121D, Bethesda, MD 20892 (Virtual Assisted Meeting), Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, NICHD Resource Program Grants in Bioinformatics (P41 Clinical Trial Not Allowed).

Date: March 31, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pediatric Clinical Pharmacology Research Career Development Award.

Date: April 5, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Moushumi Paul, Ph.D., Scientific Review Branch (SRB), Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2125D, Bethesda, MD 20817, (301) 496–3596, *moushumi.paul@nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; International & Domestic Pediatric and Maternal HIV and Other High Priority Infectious Diseases Data Coordinating Center.

Date: April 6, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; MPRINT Translational Research Resource Platform (U24 Clinical Trial Not Allowed).

Date: April 14, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Virtual Assistant Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: February 7, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02980 Filed 2–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Community Resources (Meeting 1).

Date: March 20, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Diversity Centers for Genome Research.

Date: March 29, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 402–8739, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Community Resources (Meeting 2).

Date: April 7, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (301) 594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 8, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03040 Filed 2–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6358–N–01]

Addressing Radon in the Environmental Review Process; Request for Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (HUD).

ACTION: Notice; request for comments on HUD's Draft Departmental Radon Policy.

SUMMARY: HUD has posted CPD–21–136, titled, *Departmental Policy for Addressing Radon in the Environmental Review Process,* on its website. HUD invites public comments from interested individuals, entities, and other parties on that Notice's proposed clarification that radon as a radioactive substance must be considered in the environmental review of proposed HUD-assisted projects.

DATES: Comments are due on or before: April 14, 2023.

ADDRESSES: Interested persons are invited to submit comments on the proposed Departmental Radon Policy. Comments may be submitted to HUD electronically. All submissions must refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* Electronic submission allows the maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by interested members of the public. Individuals should follow the instructions provided on that website to submit comments.

FOR FURTHER INFORMATION CONTACT: Kristin L. Fontenot, Director, Office of Environment and Energy, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7282, Washington, DC 20410–8000; email Kristin Fontenot at *Environmentalplanningdivision@hud.gov,* telephone (202) 402–7671 (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:

I. Background

The purpose of CPD–21–136, *Departmental Policy for Addressing Radon in the Environmental Review Process,* (''CPD notice'') is to clarify that radon must be considered in the contamination analysis for 24 CFR parts 50 or 58; to provide guidance on recommended best practices for considering radon; and to identify the HUD programs that have established specific radon guidance. According to the EPA, radon is the leading cause of lung cancer in non-smokers and kills an estimated 21,000 Americans each year. HUD seeks to protect resident lives by considering radon as part of the contamination analysis. The policy would apply to projects that:

- Require an environmental review at the level of *Categorically Excluded Subject to 50.4 or 58.5* (''CEST''), *Environmental Assessment,* or *Environmental Impact Statement;* and
- Involve structures that are occupied or are intended to be occupied at least four (4) hours a day.

The Policy would allow flexibility in how radon can be considered in the environmental review record. Radon testing and mitigation costs are eligible program activities for HUD programs and can be financed with most program funds. HUD's contamination policy does not apply to projects that are *Categorically Excluded Not Subject to 24 CFR 50.4 or 58.5* (''CENST'') or *Exempt* (24 CFR 58.34), unless specifically required by HUD program office requirements.

II. Request for Public Comment

HUD invites the public to review the CPD notice at the following link: *https://www.hud.gov/program_offices/comm_planning/environment_energy/notices.* HUD is interested in any comments you have regarding the proposed departmental radon policy and is specifically interested in:

- What concerns do you have about implementation of the proposed radon policy?
- What specific guidance would a HUD grantee or interested member of the public need to successfully identify and mitigate radon?

HUD will review comments received and will consider rulemaking or other administrative actions to establish radon testing and mitigation requirements for HUD-assisted projects.

Kristin L. Fontenot,

Director of the Office of Environment and Energy.

[FR Doc. 2023–03004 Filed 2–10–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2341A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0157]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we,

the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 15, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202301-1076-002* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; *comments@bia.gov;* (202) 924–2650. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 22, 2022 (87 FR 43889). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

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

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. 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.

Abstract: The ''American Indian Agricultural Resource Management Act,'' (AIARMA), 25 U.S.C. 3701 *et seq.,* authorizes the Secretary of the Interior, in participation with the beneficial owner of the land, to manage Indian agricultural lands in a manner consistent with identified Tribal goals and priorities for conservation, multiple use, sustained yield, and consistent with trust responsibilities. The regulations at 25 CFR 166, Grazing Permits; implement the AIARMA and include the specific information collection requirements. Submission of this information allows individuals or organizations to acquire or modify a grazing permit on Tribal land, individually-owned Indian land, or government land and to meet bonding requirements.

Title of Collection: Grazing Permits.

OMB Control Number: 1076–0157.

Form Number: Form 5–5423—Performance Bond, Form 5–5514—Bid for Grazing Privileges, 5–5515 Grazing Permit, Form 5–5516—Grazing Permit for Organized Tribes, Form 5–5517—Free Grazing Permit, Form 5–5519—Cash Penal Bond, Form 5–5520—Power of Attorney, Form 5–5521—Certificate and Application for On-and-Off Grazing Permit, Form 5522—Modification of Grazing Permit, Form 5–5523—Assignment of Grazing Permit, Form 5–5524—Application for Allocation of Grazing Privileges, 5–5525 Authority to Grant Grazing Privileges on Allotted Lands, Form 5–5528—Livestock Crossing Permit, and Form 5–5529—Removable Range Improvement Records.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribes, Tribal organizations, individual Indians, and non-Indian individuals and associations.

Total Estimated Number of Annual Respondents: 7,810.

Total Estimated Number of Annual Responses: 7,810.

Estimated Completion Time per Response: Varies from 20 minutes to one hour, with an average of less than one hour per response.

Total Estimated Number of Annual Burden Hours: 2,701.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2023–02963 Filed 2–10–23; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Compact Wallets and Components Thereof, DN 3668;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to

the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of The Ridge Wallet LLC on February 6, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact wallets and components thereof. The complaint names as respondents: Mosaic Brands, Inc. of Alamo, CA; Rosemar Enterprise LLC d/b/a RossM Wallet of Palm Springs, CA; INSGG of China; Shenzhen Swztech Co., Ltd d/b/a SWZA of China; and ARW of China. The complainant requests that the Commission issue a limited exclusion order, a general exclusion order, and cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3668) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 7, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02935 Filed 2–10–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0111]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Reactivation Suitability Request—ATF Form 3252.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0111 (Reactivation Suitability Request—ATF Form 3252.5) is being revised due to minor material changes to the form, such as conversion of data fields from narrative (*i.e.,* sentence) format to question format (*i.e.,* yes/no, with narrative for yes responses).

DATES: Comments are encouraged and will be accepted for 60 days until April 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, Field Operations, Enforcement Support Branch—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov* or telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection (*check justification or form 83): Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Reactivation Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form Number 3252.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The Confidential Informant (CI) handler will use the Reactivation Suitability Request—ATF Form 3252.5 to reinstate an individual to serve as a CI for ATF.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents will respond to this collection annually, and it will take each respondent approximately 2 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 50 (# total respondents for this IC) * 2 (120 minutes *i.e.* the total time per response).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02942 Filed 2–10–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–0110]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Initial Suitability Request—ATF 3252.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection OMB 1140–0110 (Initial Suitability Request—ATF 3252.4) is being revised due to minor material changes to the form, such as conversion of data fields from narrative format to question format.

DATES: Comments are encouraged and will be accepted for 60 days until April 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Renee Reid, FO/ESB—Mailstop (7.E–401) either by mail at 99 New York Ave, NE, Washington DC, 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the

information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Initial Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form Number 3252.4.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The Initial Suitability Request—ATF Form 3252.4 will be used by ATF's Confidential Informant (CI) handlers to collect personally identifiable information (PII), criminal history and other background information, in order to determine an individual's suitability to serve as an ATF CI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form annually, and it will take each respondent approximately 120 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 600 hours, which is equal to 300 (total annual respondents) * 1 (# of responses per respondent) * 2 hours (120 minutes).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02943 Filed 2–10–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–00046]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 15, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

Type of Information Collection: Extension without Change of a Currently Approved Collection.

The Title of the Form/Collection: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State, Local or Tribal Government.

Other: Federal Government.

Abstract: The letter is used by a law enforcement officer to purchase firearms to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the firearm is to be used in the official duties of the officer and that he/she has not been convicted of a misdemeanor crime of domestic violence.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 50,000 respondents will utilize the letter template associated with this information collection. It will take each respondent approximately 8 minutes to complete a response to this IC.

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 6,667, which is equal to 50,000 (total respondents) * 1 (# of response per respondent) * .133333 (8 minutes).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02936 Filed 2–10–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0086]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of and Renewal of Previously Approved Collection; Comments Requested; Electronic Applications for the Attorney Student Loan Repayment Program

AGENCY: Justice Management Division, Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until March 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Deana Willis, Assistant Director, Office of Attorney Recruitment and Management, 450 5th Street NW, Suite 10200, Washington, DC 20530; *Deana.Willis@usdoj.gov;* (202) 514–8902.

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Attorney Recruitment and Management, including whether the information will have practical utility;

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

(3) Evaluate whether, and if so, how, the quality, utility, and clarity of the information to be collected can be enhanced; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of information collection:* Revision and renewal of a currently approved collection.

2. *The title of the form/collection:* Electronic Applications for the Attorney Student Loan Repayment Program.

3. *The agency form number, if any, and the applicable component of the department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or households. Other: None. The Department of Justice Attorney Student Loan Repayment Program (ASLRP) is an agency recruitment and retention incentive program based on 5 U.S.C. 5379, as amended, and 5 CFR part 537. Individuals currently employed as a DOJ attorney and incoming hires for attorney positions within the Department may request consideration for the ASLRP. The Department selects new participants during an annual open season each spring and renews current beneficiaries (DOJ employees) who remain qualified for these benefits, subject to availability of funds. There are three forms in the collection: an initial request for consideration; a justification form, and a loan continuation form. The ''initial request'' form is submitted voluntarily, by current DOJ employees as well as by incoming DOJ attorney hires who, if selected, do not receive benefits until they are a DOJ employee. Renewal requests, submitted by only by current DOJ employees, use a related form not subject to the Paperwork Reduction Act—no non-employees would qualify.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The Department anticipates about 150 respondents annually will complete the new request form and justification form and apply for participation in the ASLRP. Of those, an average of 21 are incoming attorney hires who have not yet entered on duty with the DOJ. The remaining respondents are current DOJ employees. It is estimated that each new request (including justification) will take two (2) hours to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated burden associated with this collection is 42 hours. It is estimated that new applicants will take 2 hours to complete the request form and justification, and, as needed, the loan continuation form. The burden hours for collecting respondent data, 42 hours, are calculated as follows: 21 new respondents who are members of the public × 2 hours = 42 hours.

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02937 Filed 2–10–23; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0364]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Annual Survey of Jails in Indian Country

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the

estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, (email: *Todd.Minton@usdoj.gov;* telephone: 202–598–7226), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with changes, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* Annual Survey of Jails in Indian Country (SJIC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–5B: *Annual Survey of Jails in Indian Country (SJIC).* The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs. The Bureau of Justice Statistics (BJS) requests clearance to conduct the Annual Survey of Jails in Indian Country (SJIC) for a three-year period.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include approximately 80 confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs.

Abstract: BJS has conducted the SJIC since 1998 (excluding 2005 and 2006). The survey asks about the number of adults and juveniles held, sex of inmates, conviction status, seriousness of inmates' offenses, number of admissions and releases, number of inmate deaths, average daily population, peak population, capacity of facility, and jail staffing.

This collection is the only national effort devoted to describing and understanding annual changes in the tribal jail population. The collection enables BJS, tribal correctional authorities and administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally, as well as to track changes in the demographics and supervision status of the tribal jail population and the prevalence of crowding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS estimates approximately 80 Indian country correctional facilities with a respondent burden of about 105 minutes per facility to complete the web-based survey form, about 4 minutes per facility to verify facility operational status and point-of-contact, and an additional 10 minutes for data quality follow-up validation for a total burden of 119 minutes per facility.

6. *An estimate of the total public burden (in hours) associated with the collection:* Annual burden is about 159 hours. Total burden over three collection years is about 477 hours.

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02939 Filed 2–10–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Final Finding of No Significant Impact, Gary Job Corps Center Proposed Disposal and Reuse

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration, pursuant to the Council on Environmental Quality Regulations) implementing procedural provisions of the National Environmental Policy Act (NEPA), gives final notice of the proposed disposal of two tracts at the Gary Job Corps Center totaling 244.91 acres and that this project will not have a significant adverse impact on the environment.

DATES: These findings are effective as of February 13, 2023.

ADDRESSES: For further information contact Derrek Sanks, Department of Labor, 200 Constitution Avenue NW, Room N–4460, Washington, DC 20210; Telephone (202) 693–9972 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Derrek Sanks at (202) 693–9972 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: A public notice of availability of the draft environmental assessment (EA) was published in the *San Marcos Daily Record,* Texas, on July 28, 2022. The review period extended for 31 days, ending on August 29, 2022. No public comments were received. No changes to the findings of the EA have been made.

Implementation of the proposed action alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the EA, agency consultation, the inclusion and consideration of public review, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental effects that could occur are no more than minor in intensity, duration and context and less-than-significant. As described in the EA, there are no highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence. There are no previous, planned, or implemented actions, which, in combination with the proposed action alternative, would have significant effects on the human environment. Requirements of NEPA have been satisfied, and preparation of an

Environmental Impact Statement is not required.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02959 Filed 2–10–23; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Search Committee for LSC Inspector General (Search Committee) of the Legal Services Corporation Board of Directors will meet virtually on Friday, February 17, 2023. The meeting will commence at 1:00 p.m. EST, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings.* LSC will conduct the February 17, 2023 meeting via Zoom.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of Agenda
2. Identify Candidates for Interviews
3. Decide on Interview Questions and Other Aspects of the Interview Process
4. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: February 8, 2023.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2023–03081 Filed 2–9–23; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[23–009]

Name of Information Collection: Flight Analog Projects (FAP) Crew Selection Questionnaire

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by March 15, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This site contains a questionnaire to participate as an analog crewmember/experiment subject for Flight Analog Project (FAP) missions such as Human Exploration Research Analog (HERA) analog ground studies sponsored by NASA Human Research Program. The questionnaire is used to screen potential applicants for initial qualifications. In addition, the website describes the FAP facilities and experiments conducted to inform the general public and promote interest in the FAP missions. This site has been in use for several years under the OMB number 2700–0174 and this is a renewal of the existing site/questionnaire per direction established by the OMB processes.

II. Methods of Collection

Public Website, Web Form.

III. Data

Title:
OMB Number: 2700–0174.
Type of Review: Extension.
Affected Public: General Public.
Estimated Annual Number of Activities: 2.
Estimated Number of Respondents per Activity: 80.
Annual Responses: 160.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 40.
Estimated Total Annual Cost: 20K.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2023–02994 Filed 2–10–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–017]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on March 2, 2023, from 10 a.m. to 12:30 p.m. EST. You must register by 11:59 p.m. EST February 28, 2023, to attend.

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agendas and meeting materials: We will post all meeting materials, including the agenda, at *https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term.*

This meeting will be the fourth of the 2022–2024 committee term. The purpose of the meeting will be to discuss ways to improve the FOIA process, and to hear reports from each of the three subcommittees.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). If you wish to offer oral public comments during the public comments period of the meeting, you must register in advance through Eventbrite *https://foiaac-mtg-march-2-2023.eventbrite.com.* You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Tasha Ford,

Committee Management Officer.

[FR Doc. 2023–02940 Filed 2–10–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) hereby gives notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, February 15, 2023, from 11:00 a.m.–5:10 p.m. and Thursday, February 16, 2023, from 8:30 a.m.–2:25 p.m. EST.

PLACE: These meetings will be held at NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314, and by videoconference. To attend in-person, please email your name as it appears on your photo ID, along with your affiliation, at least 24 hours in advance to *nationalsciencebrd@nsf.gov.* If the COVID status for Alexandria, Virginia goes to ''high,'' please fill out and bring OMB's certification of vaccination form with you. All open sessions of the meeting will be webcast live on the NSB YouTube channel.

February 15, 2023: https://www.youtube.com/watch?v=RIRJkqrLljU

February 16, 2023: https://www.youtube.com/watch?v=08Hx8vQfiFE

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Wednesday, February 15, 2023

Plenary Board Meeting

Open Session: 11:00 p.m.–12:20 p.m.

- NSB Chair's Welcome
  - Swearing in of new NSB Members
- NSB Chair's Remarks
  - Chair's Activities
- Approval of December 1, 2022, open meeting minutes
- NSF Director's Remarks
  - Assistant Director presentations

Open Session: 1:20 p.m.–2:35 p.m.

- NSB Teacher Panel: Presentation and Discussion

Open Session: 2:45 p.m.–3:55 p.m.

- Committee Reports
  - Committee on Awards and Facilities
  - Committee on Oversight
  - Committee on External Engagement
  - Committee on Science and Engineering Policy
- Working Group Reports
  - Socioeconomic Status Working Group
  - Merit Review Re-examination and Vote
- NSF Director's Remarks
  - Senior staff updates
  - Office of Legislative and Public Affairs Update Information Item

Open Session: 4:05 p.m.– 5:10 p.m.

- Explorations in K–12 STEM Education Working Group Presentation and Discussion
- NSB Chair's Closing Remarks

Thursday, February 16, 2023

Plenary Board Meeting

Open Session: 8:30 a.m.–9:05 a.m.

- NSB Chair's Welcome
- Update on SAHPR (Sexual Assault/Harassment Prevention Response)

Plenary Board Meeting

Closed Session: 9:05 a.m.–10:35 a.m.

- NSB Chair's Remarks
- NSF SAHPR Update
- NSF Director's Remarks
  Agency Operating Status
- Approval of December 2, 2022, Closed Meeting Minutes
- Committee Reports
  - Committee on Awards and Facilities Report Vote on Mid-scale Research Infrastructure Track 2 Portfolio Award
  - Committee on Strategy Report
  - Committee on Oversight Report
  - Subcommittee on Technology, Innovation, and Partnerships Report

Committee on Strategy

Closed Session: 10:45 a.m.–11:45 p.m.

- Update and discussion on NSF's FY 2023 Current Plan
- Update and discussion on NSF's FY 2024 Budget Request

Plenary Board

Closed Session: 11:45 a.m.–12:15 p.m.

- NSF Update: *CHIPS and Science Act* Implementation
- Vote to Enter Executive Plenary Closed

Plenary Board

Closed (Executive) Session: 1:45 p.m.–2:25 p.m.

- NSB Chair's Opening Remarks
- Approval of December 2, 2022, Executive Plenary closed meeting minutes
- NSF Director's Remarks
  Organizational Updates
  Annual scientific award Updates
- Vote to establish ad hoc Nominations Committee
- NSB Chair's Closing Remarks

Meeting Adjourns: 2:25 p.m.

PORTIONS OPEN TO THE PUBLIC:

Wednesday, February 15, 2023

11:00 a.m.–12:20 p.m. Plenary NSB
1:20 p.m.–2:35 p.m. Plenary NSB
2:45 p.m.–3:55 p.m. Plenary NSB
4:05 p.m.–5:10 p.m. Plenary NSB

Thursday, February 16, 2023

8:30–9:05 a.m. Plenary NSB

PORTIONS CLOSED TO THE PUBLIC:

Thursday, February 16, 2023

9:05 a.m.–10:35 a.m. Plenary NSB
10:45 a.m.–11:45 a.m. Committee on Strategy Meeting
11:45 a.m.–12:15 p.m. Plenary NSB
1:45 p.m.–2:25 p.m. Plenary NSB, Executive Closed

Members of the public are advised that the NSB provides some flexibility around start and end times. A session may be allowed to run over by as much as 15 minutes if the Chair decides the

extra time is warranted. The next session will start no later than 15 minutes after the noticed start time. If a session ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. Sessions will not vary from noticed times by more than 15 minutes.

CONTACT PERSON FOR MORE INFORMATION: The NSB Office contact is Chris Blair, *cblair@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. Please refer to the NSB website for additional information: *https://www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–03076 Filed 2–9–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 13, 20, 27, March 6, 13, 20, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of February 13, 2023

There are no meetings scheduled for the week of February 13, 2023.

Week of February 20, 2023—Tentative

There are no meetings scheduled for the week of February 20, 2023.

Week of February 27, 2023—Tentative

There are no meetings scheduled for the week of February 27, 2023.

Week of March 6, 2023—Tentative

There are no meetings scheduled for the week of March 6, 2023.

Week of March 13, 2023—Tentative

There are no meetings scheduled for the week of March 13, 2023.

Week of March 20, 2023—Tentative

There are no meetings scheduled for the week of March 20, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 9, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–03111 Filed 2–9–23; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System Board of Actuaries Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The purpose of the meeting is for the Board to review the actuarial methods and assumptions used in the valuations of the Civil Service Retirement and Disability Fund (CSRDF).

DATES: The Civil Service Retirement System Board of Actuaries plans to meet on Friday, April 28, 2023 at 10 a.m. EDT.

ADDRESSES: The meeting will be held at the U.S. Office of Personnel Management (OPM), 1900 E Street NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gregory Kissel, Senior Actuary for Pension Programs, U.S. Office of Personnel Management, 1900 E Street NW, Room 4316, Washington, DC 20415, by phone at (202) 606–1774, or by email to *actuary@opm.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

1. Summary of recent legislative proposals
2. Review of actuarial assumptions
   a. Demographic Assumptions
   b. Economic Assumptions
3. CSRDF Annual Report

Persons desiring to attend this meeting of the Civil Service Retirement System Board of Actuaries, or to make a statement for consideration at the meeting, should contact OPM at least 5 business days in advance of the meeting date at the address shown below. Attendance may be limited in accordance with the building's operating status and the health and safety protocols in effect as of the date of the meeting. Any detailed information or analysis requested for the Board to consider should be submitted at least 15 business days in advance of the meeting date. The manner and time for any material presented to or considered by the Board may be limited.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2023–02944 Filed 2–10–23; 8:45 am]

BILLING CODE 6325–63–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2021–58]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* 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:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2021–58; *Filing Title:* USPS Notice of Amendment to Priority Mail and Parcel Select Contract 5, Filed Under Seal; *Filing Acceptance Date:* February 6, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* February 14, 2023.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2023–03046 Filed 2–10–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 16, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 9, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–03096 Filed 2–9–23; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08/08–0174]

Surrender of License of Small Business Investment Company; vSpring III D, L.P.

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations on the ability to function as a Small Business Investment Company under License No. 08/08–0174 issued to vSpring III D, L.P., said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2023–02988 Filed 2–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11991]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Van Gogh's Cypresses'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Van Gogh's Cypresses'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–03038 Filed 2–10–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11990]

30-Day Notice of Proposed Information Collection: Application To Determine Returning Resident Status

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to March 15, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Lage, Acting Senior Regulatory Coordinator, who may be reached on (202) 485–7586 or at *PRA_BurdenComments@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–117.
- *Respondents:* Lawful permanent residents or conditional residents who have remained outside the United States for more than one year, or who cannot return to the United States within the validity period of their Form I–551, Permanent Resident Card, or re-entry permit.
- *Estimated Number of Respondents:* 4,400.
- *Estimated Number of Responses:* 4,400.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 2,200 hours.
- *Frequency:* Once.
- *Obligation to Respond:* Required to obtain benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Under Section 101(a)(27)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(27)(A), and INA section 203(b)(4), 8 U.S.C. 1153(b)(4), a noncitizen may be issued a special immigrant visa as a returning resident if they are an immigrant, previously lawfully admitted for permanent residence, returning from a temporary visit abroad for more than one year due to circumstances outside of their control, or who cannot return to the United States within the validity period of their Form I–551, Permanent Resident Card, or Reentry Permit or re-entry permit. The DS–0117 is used to collect information necessary to determine a returning resident's eligibility.

Methodology

Individuals will submit the DS–117 electronically via email or print the form and submit in person to the U.S. embassy or consulate abroad for review.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2023–03000 Filed 2–10–23; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1605]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: International Role of the Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves questioning, via email, telephone or other means, foreign entities to determine what collaborative opportunities exist. The information to be collected is necessary to accomplish the statutory requirements to ''provide technical assistance on any other aspect of aviation safety that the Administrator determines is likely to enhance international aviation safety.'' The information collection will also inform the FAA's International Strategy, which is the agency's mechanism for fulfilling its international role. The information collection directly supports the International Strategy by enabling the FAA to reshape and further strengthen its longstanding international contributions.

DATES: Written comments should be submitted by April 11, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Nicholas DeLotell, Office of International Affairs, 800 Independence Ave. SW, Washington, DC 20591.

By Fax: (202) 267–7198.

FOR FURTHER INFORMATION CONTACT: Nicholas DeLotell by email at: *nicholas.delotell@faa.gov;* phone: (202) 710–1163.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: International Role of the Federal Aviation Administration.

Form Numbers: None.

Type of Review: Clearance of a new information collection.

Background: 49 U.S.C. 40104 requires ''the Administrator to promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by engaging with foreign counterparts, in the International Civil Aviation Organization (ICAO) and its subsidiary organizations, and other international organizations and fora, and with the private sector.'' The statute further requires the Administrator to engage bilaterally and multilaterally on an ongoing basis to bolster international collaboration and to harmonize international aviation safety requirements, and to expand the technical assistance provided by the FAA in support of enhancing international aviation safety.

This information collection specifically facilitates work and training arrangements with foreign counterparts, ICAO and its subsidiary organizations, other international organizations and fora, and with private entities around the world; it identifies opportunities and unexpected changes; and it ultimately contributes to the fulfillment of the FAA's mission to provide the safest, most efficient aerospace system in the world.

Foreign affairs specialists assigned to the FAA Office of International Affairs will collect information from respondents (foreign counterparts, ICAO and its subsidiary organizations, other international organizations and fora, or from private foreign entities) verbally, in-person or telephonically, or in writing via letter, email, or other electronic means.

Respondents: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Frequency: The FAA estimates this collection of information would result in approximately twenty instances of international technical assistance per year.

Estimated Average Burden per Response: Given unique requirements the FAA and respondents may have, and the ongoing dialog necessary to conduct work with foreign entities, the FAA estimates a cumulative burden of approximately 4 hours per response.

Estimated Total Annual Burden: We estimate 20 responses per year at an average of 4 hours per response, for a total annual hourly burden of 80 hours. We found that these activities are typically performed by the respondents' equivalent to a FAA foreign affairs specialist, for which the FAA assumes a mid-grade GS–13 salary, Rest of USA locality. Annual salary is $106,955, divided by 2,080 hours for an hourly rate of $51.42. The FAA uses a fringe benefits and overhead cost, for FAA employees, of 100%. This results in a fully loaded wage of $102.84 per hour. The total hourly burden of 80 multiplied by the fully loaded hourly rate of $102.84 results in an annual economic burden of $8,227.20.

Issued in Washington, DC, on February 7, 2023.

India Pinkney,

Executive Director, Office of International Affairs.

[FR Doc. 2023–02985 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2014–0103; FMCSA–2014–0106; FMCSA–2014–0384; FMCSA–2014–0386; FMCSA–2015–0328; FMCSA–2016–0002; FMCSA–2017–0057; FMCSA–2017–0058; FMCSA–2018–0135; FMCSA–2018–0136; FMCSA–2019–0111; FMCSA–2020–0028]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 25 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2015–0328, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2019–0111, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room

W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 5, 2023, FMCSA published a notice announcing its decision to renew exemptions for 25 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 902). The public comment period ended on February 6, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz,

1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 25 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below:

As of January 15, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (88 FR 904):

Michael Arwood (TN)
David Chappelear (TX)
Joshua Cogan (MD)
Sean Dearsman (OH)
Jan Epitacio (CA)
Jerry Jones (TX)
Robert Knapp (MD)
James Laughrey (KS)
Christopher McKenzie (TX)
Kathy Miller (IA)
Ervin Mitchell (TX)
Lesley O'Rorke (IL)
Gerson Ramirez (MT)
William Ranson (AR)
William Tassell (OH)
Michael Wilkes (MA)

The drivers were included in docket numbers FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, or FMCSA–2019–0111. Their exemptions were applicable as of January 15, 2023 and will expire on January 15, 2025.

As of January 22, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (88 FR 904):

Hassan Abdi (MN)
Gage Burchett (VA)
Jeffrey Daniel (NV)
Gabriel Despanie (LA)
Jaymes Haar (IA)
Andrew Hatch (IA)
MarcKenzie Loriston (FL)
Carlos Sotelo Sanchez (CA)
Matthew Spainhoward (KY)

The drivers were included in docket numbers FMCSA–2015–0328 or FMCSA–2020–0028. Their exemptions were applicable as of January 22, 2023 and will expire on January 22, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03044 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0017]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 10 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 15, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0017 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0017) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0017), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2023-0017.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0017) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 10 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Albert Arzola

Albert Arzola, 69, holds a class A commercial driver's license (CDL) in Virginia.

Alexander Chaykin

Alexander Chaykin, 37, holds a class E driver's license in California.

Henry Cisneros

Henry Cisneros, 25, holds a class C driver's license in California.

Russell Dukes

Russell Dukes, 31, holds a class D driver's license in Ohio.

Michael Lua-Morales

Michael Lua-Morales, 25, holds a class C driver's license in Pennsylvania.

James Luthro

James Luthro, 40, holds a class A CDL in Texas.

Francisco Mejia

Francisco Mejia, 25, holds a class C driver's license in Texas.

Joseph Nelson

Joseph Nelson, 41, holds a class R driver's license in Colorado.

Amber Porter

Amber Porter, 32, holds a class D driver's license in Wisconsin.

Rajbir Shokar

Rajbir Shokar, 27, holds a class C driver's license in California.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03045 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0029]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 15, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0029 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0029) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0029), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA–2023–0029.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0029) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication, and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a notice of final disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Joseph Harbaugh

Joseph Harbaugh is a 36-year-old class D license holder in Illinois. They have a history of complex partial seizure and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since December 2019. Their physician states that they are supportive of Joseph Harbaugh receiving an exemption.

Erik Hernandez

Erik Hernandez is a 28-year-old class B commercial driver's license (CDL) holder in Alaska. They have a history of epilepsy and have been seizure free since 2011. They take anti-seizure medication with the dosage and frequency remaining the same since December 2020. Their physician states that they are supportive of Erik Hernandez receiving an exemption.

Robert Hilburn

Robert Hilburn is a 58-year-old class A CDL holder in Texas. They have a history of generalized seizure disorder and has been seizure free since 1992. They take anti-seizure medication with the dosage and frequency remaining the same since January 2011. Their physician states that they are supportive of Robert Hilburn receiving an exemption.

Herman Lee

Herman Lee is a 35-year-old class A CDL holder in Virginia. They have a history of epilepsy and have been seizure free since 2013. They take anti-seizure medication with the dosage and frequency remaining the same since 2013. Their physician states that they are supportive of Herman Lee receiving an exemption.

Joel Vasquez

Joel Vasquez is a 21-year-old class D license holder in New York. They have a history of generalized epilepsy and have been seizure free since July 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Joel Vasquez receiving an exemption.

Spencer William

Spencer William is a 31-year-old class A CDL holder in Ohio. They have a history of generalized seizure and myoclonic jerks and have been seizure free since 2008. They take anti-seizure medication with the dosage and frequency remaining the same since 2009. Their physician states that they are supportive of Spencer William receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03042 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0106; FMCSA–2015–0326; FMCSA–2016–0002; FMCSA–2020–0026]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 6, 2022. The exemptions expire on September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0106, FMCSA–2015–0326, FMCSA–2016–0002, or FMCSA–2020–0026) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On August 24, 2022, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 52107). The public comment period ended on September 23, 2022, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received three comments in this proceeding. Jeff Daniels' comment regarding drug testing was outside the scope of this notice. The Commercial Vehicle Training Association's (CVTA's) comment was found identical to the comment they submitted to the August 17, 2022, **Federal Register** notice (87 FR 50690). FMCSA provided a response to this comment in the December 29, 2022, **Federal Register** notice (87 FR 80254) that will not be repeated in this notice. Lastly, an anonymous individual opposed the same comment by CVTA.

IV. Conclusion

Based upon its evaluation of the seven renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of September 6, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (87 FR 52107):

Weston Arthurs (CA)
Charles DePriest (TX)
Richard Hoots (AR),
D'Nielle Smith (OH)

The drivers were included in docket number FMCSA–2014–0106, FMCSA–2015–0326, or FMCSA–2016–0002. Their exemptions were applicable as of September 6, 2022 and will expire on September 6, 2024.

As of September 14, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Jonathan Kelly (TX)
Eddie Martinez (TX)
Willie Miller (IA)

The drivers were included in docket number FMCSA–2020–0026. Their exemptions were applicable as of September 14, 2022 and will expire on September 14, 2024.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03020 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0041]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators (ICDs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from four individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure. If granted, the exemptions

would enable these individuals with ICDs to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 15, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0041 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0041) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0041), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2023-0041.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments, go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0041) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The four individuals listed in this notice have requested an exemption from § 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in § 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Kevin Coughlin

Kevin Coughlin is a class A driver's license holder in Massachusetts. A letter dated January 12, 2023, from Kevin Coughlin's cardiologist reports that the ICD was implanted 25 years ago due to a diagnosis of long QT syndrome. Kevin Coughlin's cardiologist reports that in 2003, they received one defibrillation but for the last 20 years, they have not experienced any dangerous arrhythmias or defibrillator shock therapies and that their condition is stable.

Charles Halepakis

Charles Halepakis is a class A driver's license holder in Massachusetts. Charles Halepakis' ICD was implanted on January 11, 2022. Their cardiologist reports diagnoses of cardiomyopathy, coronary artery disease, and heart failure. Since the implantation of the device, the cardiologist reports that Charles Halepakis has experienced no overt heart failure symptoms and that they maintain a high functional capacity on a limited medical regimen.

[1] These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, Section D. Cardiovascular: § 391.41(b)(4), paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Antonio Maceroni

Antonio Maceroni is a class B driver's license holder in Michigan. A letter dated November 9, 2022, from Antonio Maceroni's health care provider reports that their ICD was implanted on January 5, 2021, due to a diagnosis of ventricular tachycardia. Since being implanted, Antonio Maceroni has experienced six episodes of cardiac arrythmias which received pace terminated therapy. The healthcare provider reports that Antonio Maceroni denies symptoms of ventricular tachycardia related arrhythmia since the implantation.

Michael Wilson

Michael Wilson is a class A driver's license holder in Florida. Michael Wilson's ICD was implanted on February 12, 2015. The cardiologist reports that the ICD was implanted due to diagnoses of cardiomyopathy and cardiac sarcoidosis with high-risk features. Since implantation, Michael Wilson had a single episode of syncope in 2015, with no subsequent reports of shocks or cardiac complaints.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–03019 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0061]

Union Pacific Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on February 3, 2023, Union Pacific Railroad (UP) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by March 6, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0061. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports*. All comments received will be posted without change to *https://www.regulations.gov*; this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov*.

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on February 3, 2023, UP submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), and that RFA is available in Docket No. FRA–2010–0061.

Interested parties are invited to comment on UP's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy. See https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–02995 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0031]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PALADIN (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0031 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0031 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0031, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PALADIN is:

—*Intended Commercial Use of Vessel:* ''For hire charter fishing.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Tarpon Springs, FL)
—*Vessel Length and Type:* 40′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0031 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0031 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03024 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0033]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PHYSALIA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0033 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0033 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S.

Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0033, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PHYSALIA is:

—*Intended Commercial Use of Vessel:* ''Charter sails for tourists, no commercial goods.''
—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina, Puerto Rico.'' (Base of Operations: St. Thomas, USVI)
—*Vessel Length and Type:* 51′Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2023–0033 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0033 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03026 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0029]

Request for Comments on the Renewal of a Previously Approved Information Collection: Capital Construction Fund and Exhibits

AGENCY: Maritime Administration, DOT.

ACTION: 60-Day **Federal Register** notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The information collected in the proposed collection OMB 2133–0027 (Capital Construction Fund and Exhibits) is necessary for MARAD to determine an applicant's eligibility to enter a Capital Construction Fund (CCF) Agreement, and their compliance with the requirements of this program. This collection is being revised to include additional respondents, responses, and burden hours, due to the recent approval of the Defense Authorization Act of 2023 expanding the current pool of eligible CCF program participants. The Paperwork Reduction Act of 1995 requires that we publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before April 14, 2023.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2023–0029 through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department

of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, Office of Financial Approvals, by mail at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W23–322, Washington, DC 20590, by email at *daniel.ladd@dot.gov,* or by telephone at (202) 366–1859.

SUPPLEMENTARY INFORMATION:

Title: Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Renewal of a previously approved information collection.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. chapter 535 and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Respondents: U.S. citizens who own or lease one or more eligible vessels and who have or desire to establish a program to provide for the acquisition, construction, or reconstruction of a qualified vessel.

Affected Public: Individuals and businesses.

Estimated Number of Respondents: 243.

Estimated Number of Responses: 243.

Annual Estimated Total Annual Burden Hours: 3,281.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

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By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03027 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0035]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FINCH (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0035 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0035 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0035, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FINCH is:

—*Intended Commercial Use of Vessel:* ''Passenger day sailing.''

—*Geographic Region Including Base of Operations:* ''New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York.'' (Base of Operations: Portsmouth, NH)

—*Vessel Length and Type:* 36′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0035 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach

additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0035 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03029 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0037]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: NASHVILLE PROPER (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0037 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0037 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0037, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel NASHVILLE PROPER is:

—*Intended Commercial Use of Vessel:* ''Day charter.''
—*Geographic Region Including Base of Operations:* ''Tennessee.'' (Base of Operations: Nashville, TN)
—*Vessel Length and Type:* 65.7′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0037 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0037 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for

new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03025 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0034]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: II A (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0034 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0034 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0034, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel II A is:

—Intended Commercial Use of Vessel: ''Pleasure cruising.''
—Geographic Region Including Base of Operations: ''Florida.'' (Base of Operations: North Palm Beach, FL)
—Vessel Length and Type: 37′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0034 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0034 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you

claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03030 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0032]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BLISSFUL SEAS (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0032 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0032 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0032, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BLISSFUL SEAS is:

—*Intended Commercial Use of Vessel:* ''Chartering passengers—will be transporting paid customers from port to designated port.''
—*Geographic Region Including Base of Operations:* ''Alaska.'' (Base of Operations: Cordova, AK)
—*Vessel Length and Type:* 46′ Sail (Monohull)

The complete application is available for review identified in the DOT docket as MARAD 2023–0032 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0032 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your

submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03031 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0030]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WOUND UP (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0030 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0030 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0030, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WOUND UP is:

—*Intended Commercial Use of Vessel:* ''Recreational fishing 6-pack charters.''

—*Geographic Region Including Base of Operations:* ''Virginia and North Carolina.'' (Base of Operations: Norfolk, VA)

—*Vessel Length and Type:* 28′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0030 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0030 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03032 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0036]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WEATHERBIRD II (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 15, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0036 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0036 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0036, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WEATHERBIRD II is:

—*Intended Commercial Use of Vessel:* ''Charter.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.'' (Base of Operations: Fort Lauderdale, FL)

—*Vessel Length and Type:* 44.3′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0036 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0036 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's

compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03028 Filed 2–10–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting the public to nominate financial institutions, trade groups, and non-federal regulators or law enforcement agencies for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by March 15, 2023.

ADDRESSES: Nominations must be emailed to *BSAAG@fincen.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION: Section 1564 of the Annunzio-Wylie Anti-Money Laundering (AML) Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal agencies, and other interested persons and financial institutions subject to the regulatory requirements of the Bank Secrecy Act, found at 31 CFR Chapter X. The BSAAG is the means by which the Treasury receives advice on the reporting requirements of the Bank Secrecy Act, and informs private sector representatives on how the information they provide is used. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions, trade groups, and federal and non-federal regulators and law enforcement agencies that are located within the United States. FinCEN recently published a final rule [1] establishing a beneficial ownership information reporting requirement pursuant to the Corporate Transparency Act. The rule will require most corporations, limited liability companies, and other entities created or registered to do business in the United States to report information about their beneficial owners, *i.e.,* the persons who ultimately own or control the company, to FinCEN. We invite firms, trade groups, and federal and state governmental entities within the United States that are impacted by the new rule to express interest in BSAAG membership, with a clear explanation on how their perspectives can enhance the broader BSAAG discussions. We also continue to welcome nominations from eligible entities that can actively share their perspectives on a variety of Bank Secrecy Act requirements, including implementation of the requirements described in Anti-Money Laundering Act of 2020.[2]

Each member selected will serve a three-year term and must designate one individual to represent that member at plenary meetings. While BSAAG membership is granted to organizations, not to individuals, the designated representative for each selected organization should be knowledgeable about Bank Secrecy Act requirements and be willing and able to devote the necessary time and effort on behalf of the representative's organization. Members are expected to actively share anecdotal perspectives, quantifiable insights on BSA requirements, and industry trends in BSAAG discussions. The organization's representative must be able to attend biannual plenary meetings, generally held in Washington, DC, over one or two days in May and October. Additional BSAAG meetings may be held by phone, videoconference, or in person, and the organization's representative is expected to actively engage in the BSAAG's work through participation in meetings of various BSAAG Subcommittees and/or working groups, including Subcommittees established pursuant to the Anti-Money Laundering Act of 2020 (AML Act).

[1] *FinCEN Issues Final Rule for Beneficial Ownership Reporting to Support Law Enforcement Efforts, Counter Illicit Finance, and Increase Transparency | FinCEN.gov.*

[2] The AML Act was enacted as Division F, §§ 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021). The AML Act, among other provisions, mandated the creation of a BSAAG Subcommittee on Innovation and Technology (Section 6207) and a BSAG Subcommittee on Information Security and Confidentiality (Section 6302).

Members will not be paid for their time, services, or travel.

Nominations for individuals who are not representing an organization will not be considered, but organizations may nominate themselves. Please provide complete answers to the following items, as nominations will be evaluated based on the information provided in response to this notice and request for nominations. There is no required format; interested organizations may submit their nominations via email or email attachment. Nominations should consist of:

- Name of the organization requesting membership.
- Point of contact, title, address, email address, and phone number.
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, AML Act of 2020, or Corporate Transparency Act.
- Reasons why the organization's participation on the BSAAG will bring value to the group
- Trade groups must submit a full list of their members along with their nomination. Trade groups must also confirm that, if selected, they will only share BSAAG information with their members that are located within the United States.

In making the selections, FinCEN will seek to complement current BSAAG members and obtain comprehensive representation in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and will not limit consideration to institutions nominated by the public when making selections.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–02977 Filed 2–10–23; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals

and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing the names of one or more persons that have been removed from the SDN List.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On February 8, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. ARCHAGA CARIAS, Yulan Adonay (a.k.a. ''MENDOZA, Alexander''; a.k.a. ''PORKY''), Honduras; DOB 13 Feb 1982; alt. DOB 21 Jan 1982; POB San Pedro Sula, Cortes, Honduras; nationality Honduras; Gender Male (individual) [TCO] (Linked To: MS–13).

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations,'' 76 FR 44757 (July 27, 2011) (E.O. 13581), as amended by Executive Order 13863 of March 15, 2019, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Transnational Criminal Organizations,'' 84 FR 10255 (March 19, 2019) (E.O. 13581, as amended), for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MS–13, a person whose property and interests in property are blocked pursuant to E.O. 13581.

2. CAMPBELL LICONA, David Elias (a.k.a. PEREZ PAZ, Jorge Eduardo; a.k.a. ''CAMPBELL, David''; a.k.a. ''DON DAVID''; a.k.a. ''VIEJO DAN''), Nicaragua; DOB 18 Mar 1967; alt. DOB 20 Oct 1967; alt. DOB 02 Jan 1964; POB San Pedro Sula, Honduras; nationality Honduras; Gender Male; Numero de Identidad 0501–1967–02094 (Honduras) (individual) [TCO] (Linked To: MS–13).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13581, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MS–13, a person whose property and interests in property are blocked pursuant to E.O. 13581.

B. On February 8, 2023, OFAC determined that circumstances no longer warrant the inclusion of the following persons on the SDN List and that their property and interests in property are no longer blocked under E.O. 13581, as amended.

BILLING CODE 4810–AL–P

Individuals

1. LEONTYEV, Vladislav Vladimirovich (Cyrillic: ЛЕОНТЬЕВ, ВЛАДИСЛАВ ВЛАДИМИРОВИЧ) (a.k.a. LEONTIEV, Vladislav; a.k.a. LEONTIEV, Vlantislav; a.k.a. LEONTJEVAS, Vladislavas; a.k.a. LEONTYEV, Vadik; a.k.a. LEONTYEV, Vadim; a.k.a. LEONTYEV, Vyacheslav; a.k.a. "BELOBRYSYY"; a.k.a. "BELYY"; a.k.a. "VADIK BELEY"; a.k.a. "VADIK BELYY" (Cyrillic: "ВАДИК БЕЛЫЙ"); a.k.a. "VADIM BELYY"), Al Fattan Marina Tower, #901, Dubai Marina, Dubai, United Arab Emirates; Nizhny Novgorod 6th District, #1A, Russia; Mikrorayon 6, 1/A-81, Avtozavodsky District, Nizhny Novgorod, Russia; DOB 05 Jul 1971; POB Nizhny Novgorod, Russia; nationality Russia; Gender Male; Passport 515731854 (Russia); alt. Passport 2200319927 (Russia); alt. Passport AK0517906 (Greece); alt. Passport H2214925 (Ghana); alt. Passport 326106; alt. Passport 1602418; alt. Passport 20382107; Identification Number 60229551 (United Arab Emirates) (individual) [TCO] (Linked To: THIEVES-IN-LAW).

2. LEPSVERIDZE, Grigory Victorovich (a.k.a. LEPS, Grigoriy; a.k.a. LEPS, Grigory; a.k.a. "GRISHA"), Phuket, Thailand; DOB 16 Jul 1962; POB Sochi, Russia (individual) [TCO].

3. SHLYKOV, Igor Leonidovich (a.k.a. "SHLYK"); DOB 02 Nov 1967; Passport 530134972 (Russia) (individual) [TCO].

4. MANUYLOV, Aleksandr Leonidovich (a.k.a. MANUILOV, Alexander; a.k.a. MANUYLOV, Alexander; a.k.a. "SASHA SAMARSKIY"); DOB 03 Mar 1962; POB Russia; Passport 3056306 (Russia) (individual) [TCO].

BILLING CODE 4810–AL–C

Entities

1. FRIENDS TRAVEL INN PRIVATE LIMITED (a.k.a. FRIENDS TRAVEL INN PVT LTD), Basement Al Hajj Tower Basement Jhangir Abad Bus Stop, University Road, Peshawar 25000, Pakistan; Basement Al Haj Tower, University Road, Peshawar, Kyhber Pakhtunkhwa 25000, Pakistan; website *www.ftravelinn.com;* Organization Established Date 04 Jul 2010; Organization Type: Travel agency activities; Commercial Registry Number 0072107 (Pakistan) [TCO] (Linked To: ABID ALI KHAN TRANSNATIONAL CRIMINAL ORGANIZATION).

2. M S GROUP INVEST OOO, 9 Prospekt Universitetski, Moscow 119296, Russia; National ID No. 5107746076994 (Russia); alt. National ID No. 69686198 (Russia); alt. National ID No. 7736626537 (Russia) [TCO].

3. AVUAR OOO (a.k.a. AVUAR LLC), 12/120, Komn 51, Ulitsa Demokraticheskaya, Samara 443031, Russia; National ID No. 1036300456213 (Russia); alt. National ID No. 14565711 (Russia); alt. National ID No. 6315565439 (Russia) [TCO].

Dated: February 8, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–02992 Filed 2–10–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Agency Information Collection Activity Under OMB Review: Application for Benefits for Qualifying Veteran's Child Born With Disabilities

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. 2900–0572.

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. 2900–0572'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1805, 1815, 1821, and 1822.

Title: Application for Benefits for Qualifying Veteran's Child Born with Disabilities (VA Form 21–0304).

OMB Control Number: 2900–0572.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0304 is used to determine the monetary allowance for a child born with Spina Bifida or certain birth defects who is the natural child of a Vietnam and certain Thailand or Korea service veterans. Without this information, VA would be unable to effectively administer 38 U.S.C. 1805, 1815, 1821, and 1822.

No substantive changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 229 on November 30, 2022, pages 73585 and 73586.

Affected Public: Individuals or Households.

Estimated Annual Burden: 115.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 688.

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. 2023–02931 Filed 2–10–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Agency Information Collection Activity Under OMB Review: Notice of Waiver of Compensation or Pension To Receive Military Pay and Allowances

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. 2900–0463.''

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. 2900–0463'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5304 and 10 U.S.C. 12316.

Title: Notice of Waiver of Compensation or Pension to Receive Military Pay and Allowances (VA Form 21–8951–2).

OMB Control Number: 2900–0463.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–8951–2 is used by reservists/guardsmen to file a waiver for VA disability benefits in order to receive active or inactive duty training pay. The law prohibits concurrent payment of training pay and VA benefits.

No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 232 on December 5, 2022, pages 74474 and 74475.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,194 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 13,162.

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. 2023–02955 Filed 2–10–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Agency Information Collection Activity Under OMB Review: Student Verification of Enrollment

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 revision 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. 2900–0465.

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. 2900–0465'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Section 3680(g); Public Law 96–342 Section 903; Title 10 U.S.C., National Call to Service; Chapter 31 Section 510; Title 38 U.S.C., Chapters

30, 32, 33, 35, and Title 10 U.S.C., Chapter 1606.

Title: Student Verification of Enrollment, VAF 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Revision of a currently approved collection.

Abstract: The VA uses the information requested by this collection to determine the eligible beneficiaries' continued entitlement to benefits. The collection of this information is essential for the administration of these programs. The student is required to submit the verification on a monthly basis to allow for a frequent, periodic release of payment. Without this information, VA could not pay eligible beneficiaries benefits based on their proof of attendance and/or change(s) in their enrollment. Information technology is being used to collect the information provided on this form. Individuals receiving benefits under chapter 33 do not have to verify their attendance. Chapters 30 and 1606 respondents must submit this information electronically using either the automated telephone system or the internet. The information is provided via the Toll-free automated telephone number using Interactive Voice Response technology (IVR). If the information is provided via the internet, it is collected via the Web Automated Verification of Enrollment (WAVE) system. Only respondents receiving education benefits under chapter 32 or 35, or section 903, who are enrolled in NCD programs receive the paper form. The VA extracts claimant information electronically from education data resources and places it into the appropriate blocks of VA Form 22 8979. The VA then sends the printed form for chapters 32 and 35, as well as section 903 to respondents during computer generated monthly mailings. Majority of the individuals enrolled in NCD programs verify their attendance using the Toll-free customer service number (1–888–442–4551) instead of returning the form. The number of respondents who complete and return the paper form is insignificant. Collection of this information on a monthly basis will prevent overpayment of benefits due to late reporting, since payment will not be made until the report of attendance has been returned to VA and processed. To collect information less often would preclude VA from making monthly payments as required under existing regulations. This collection submission results in an increase in burden. The change in the burden is due to an increase in the number of respondents for periods 2019, 2020 and 2021.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 74698 on December 6, 2022, page 74698.

Affected Public: Individuals and Households.

Estimated Annual Burden: 21,526 hours.

Estimated Average Burden Time per Respondent: 1 minute.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 258,313.

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. 2023–02981 Filed 2–10–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 29 February 13, 2023

Part II

Environmental Protection Agency

40 CFR Part 52
Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2021–0663; EPA–R02–OAR–2021–0673; EPA–R03–OAR–2021–0872; EPA–R03–OAR–2021–0873; EPA–R04–OAR–2021–0841; EPA–R05–OAR–2022–0006; EPA–R06–OAR–2021–0801; EPA–R07–OAR–2021–0851; EPA–R08–OAR–2022–0315; EPA–R09–OAR–2022–0394; EPA–R09–OAR–2022–0138; FRL–10209–01–OAR]

Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final agency action.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is finalizing the disapproval of State Implementation Plan (SIP) submissions for 19 states regarding interstate transport and finalizing a partial approval and partial disapproval of elements of the SIP submission for two states for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The ''good neighbor'' or ''interstate transport'' provision requires that each state's SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of ''infrastructure'' requirements, which are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Disapproving a SIP submission establishes a 2-year deadline for the EPA to promulgate Federal Implementation Plans (FIPs) to address the relevant requirements, unless the EPA approves a subsequent SIP submission that meets these requirements. Disapproval does not start a mandatory sanctions clock. The EPA is deferring final action at this time on the disapprovals it proposed for Tennessee and Wyoming.

DATES: The effective date of this final rule is March 15, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0663. Additional supporting materials associated with this final action are included in certain regional dockets. *See* the memo ''Regional Dockets Containing Additional Supporting Materials for Final Action on 2015 Ozone NAAQS Good Neighbor SIP Submissions'' in the docket for this action. All documents in the dockets are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Mr. Thomas Uher, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541–5534; email address: *uher.thomas@epa.gov.*

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

References to section numbers in roman numeral refer to sections of this preamble unless otherwise specified.

I. General Information

A. How can I get copies of this document and other related information?

The EPA established a Headquarters docket for this action under Docket ID No. EPA–HQ–OAR–2021–0663 and several regional dockets. All documents in the docket are listed in the electronic indexes, which, along with publicly available documents, are available at *https://www.regulations.gov.* Publicly available docket materials are also available in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. Some information in the docket may not be publicly available via the online docket due to docket file size restrictions, such as certain modeling files, or content (*e.g.,* CBI). For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA also established dockets in each of the EPA Regional offices to help support the proposals that are now being finalized in this national action. These include all public comments, technical support materials, and other files associated with this final action. Each regional docket contains a memorandum directing the public to the headquarters docket for this final action. While all documents in regional dockets are listed in the electronic indexes at *https://www.regulations.gov,* some information may not be publicly available via the online dockets due to docket file size restrictions, such as certain modeling files, or content (*e.g.,* CBI). Please contact the EPA Docket Center Services for further information.

B. How is the preamble organized?

Table of Contents

C. Where do I go if I have state-specific questions?

The following table identifies the states covered by this final action along with an EPA Regional office contact who can respond to questions about specific SIP submissions.

Regional offices	States
EPA Region 2: Kenneth Fradkin, Air and Radiation Division/Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007.	New Jersey, New York.
EPA Region 3: Mike Gordon, Planning and Implementation Branch, EPA Region III, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103.	Maryland, West Virginia.
EPA Region 4: Evan Adams, Air and Radiation Division/Air Planning and Implementation Branch, EPA Region IV, 61 Forsyth Street SW, Atlanta, Georgia 30303.	Alabama, Kentucky, Mississippi.
EPA Region 5: Olivia Davidson, Air & Radiation Division/Air Programs Branch, EPA Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3511.	Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin.
EPA Region 6: Sherry Fuerst, Air and Radiation Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270.	Arkansas, Louisiana, Oklahoma, Texas.
EPA Region 7: William Stone, Air and Radiation Division, Air Quality Planning Branch, EPA Region VII, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Missouri.
EPA Region 8: Adam Clark, Air and Radiation Division, EPA, Region VIII, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202.	Utah.
EPA Region 9: Tom Kelly, Air and Radiation Division, EPA Region IX, 75 Hawthorne St., San Francisco, California 94105.	California, Nevada.

II. Background and Overview

The following provides background for the EPA's final action on these SIP submissions related to the interstate transport requirements for the 2015 8-hour ozone NAAQS (2015 ozone NAAQS).

A. Description of Statutory Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm) for the 8-hour standard.[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions [2] meeting the applicable requirements of section 110(a)(2).[3] One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the ''good neighbor'' or ''interstate transport'' provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[4]

On February 22, 2022, the EPA proposed to disapprove 19 good neighbor SIP submissions from the States of Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, West Virginia, and Wisconsin.[5] On May 24, 2022, the EPA proposed to disapprove four additional good neighbor SIP submissions from the States of California, Nevada, Utah, and Wyoming.[6] On October 25, 2022, the EPA proposed to disapprove a new good neighbor SIP submission from Alabama submitted on June 21, 2022.[7] The EPA is deferring action on the proposals related to the good neighbor SIP submissions from Tennessee and Wyoming at this time. As explained in the notifications of proposed disapproval, the EPA's justification for each of these proposals applies uniform, nationwide analytical methods, policy judgments, and interpretation with respect to the same CAA obligations, *i.e.,* implementation of good neighbor requirements under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS for states across the country. The EPA's final action is likewise based on this common core of determinations. As indicated at proposal, the EPA is taking a consolidated, single final action

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] The terms ''submission,'' ''revision,'' and ''submittal'' are used interchangeably in this document.

[3] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under CAA section 110(a)(2) are referred to as infrastructure requirements.

[4] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–11 (D.C. Cir. 2008) (*North Carolina*).

[5] 87 FR 9545 (February 22, 2022) (Alabama, Mississippi, Tennessee); 87 FR 9798 (February 22, 2022) (Arkansas, Louisiana, Oklahoma, Texas); 87 FR 9838 (February 22, 2022) (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin); 87 FR 9498 (February 22, 2022) (Kentucky); 87 FR 9484 (February 22, 2022) (New Jersey, New York); 87 FR 9463 (February 22, 2022) (Maryland); 87 FR 9533 (February 22, 2022) (Missouri); 87 FR 9516 (February 22, 2022) (West Virginia).

[6] 87 FR 31443 (May 24, 2022) (California); 87 FR 31485 (May 24, 2022) (Nevada); 87 FR 31470 (May 24, 2022) (Utah); 87 FR 31495 (May 24, 2022) (Wyoming).

[7] 87 FR 64412 (October 25, 2022) (Alabama). Alabama withdrew its original good neighbor SIP submission on April 21, 2022. *Id.* at 64419.

on the proposed SIP disapprovals.[8] Included in this document is final action on 2015 ozone NAAQS interstate transport SIPs addressing CAA section 110(a)(2)(D)(i)(I) for Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. The 2015 ozone NAAQS interstate transport SIP submissions addressing CAA section 110(a)(2)(D)(i)(I) for Tennessee and Wyoming will be addressed in a separate action.

B. Description of the EPA's 4-Step Interstate Transport Framework

The EPA used a 4-step interstate transport framework (or 4-step framework) to evaluate each state's implementation plan submission addressing the interstate transport provision for the 2015 ozone NAAQS. The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior NAAQS in several regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,[9] the Cross-State Air Pollution Rule Update (CSAPR Update) [10] and the Revised CSAPR Update, both of which addressed the 2008 ozone NAAQS.[11]

Shaped through the years by input from state air agencies [12] and other stakeholders on EPA's prior interstate transport rulemakings and SIP actions,[13] as well as a number of court decisions, the EPA has developed and used the following 4-step interstate transport framework to evaluate a state's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.,* nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in other (*i.e.,* downwind) states sufficiently such that the states are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The general steps of this framework allow for some methodological variation, and this can be seen in the evolution of the EPA's analytical process across its prior rulemakings. This also means states have some flexibility in developing analytical methods within this framework (and may also attempt to justify an alternative framework altogether). The four steps of the framework simply provide a reasonable organization to the analysis of the complex air quality challenge of interstate ozone transport. As discussed further throughout this document, the EPA has organized its evaluation of the states' SIP submissions around this analytical framework (including the specific methodologies within each step as evolved over the course of the CSAPR rulemakings since 2011), but where states presented alternative approaches either to the EPA's methodological approaches within the framework, or organized their analysis in some manner that differed from it entirely, we have evaluated those analyses on their merits or, in some cases, identified why even if those approaches were acceptable, the state still does not have an approvable SIP submission as a whole.

C. Background on the EPA's Ozone Transport Modeling Information

In general, the EPA has performed nationwide air quality modeling to project ozone design values, which are used in combination with measured data to identify nonattainment and maintenance receptors at Step 1. To quantify the contribution of emissions from specific upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors at Step 2, the EPA performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling projected contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in individual upwind states.

The EPA has released several documents containing projected design values, contributions, and information relevant to air agencies for evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.[14] In the NODA, the EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.[15] On October 27, 2017, the EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and was intended to provide information to assist states' efforts to develop SIP submissions to address interstate transport obligations for the 2008 ozone NAAQS.[16] On March 27, 2018, the EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the

[8] In its proposals, the EPA stated ''The EPA may take a consolidated, single final action on all the proposed SIP disapproval actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Should EPA take a single final action on all such disapprovals, this action would be nationally applicable, and the EPA would also anticipate, in the alternative, making and publishing a finding that such final action is based on a determination of nationwide scope or effect.'' E.g., 87 FR 9463, 9475 n.51.

[9] *See* Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[10] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

[11] In 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019) (*Wisconsin*). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the ''CSAPR Close-Out,'' 83 FR 65878 (December 21, 2018), in *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019).

[12] *See* 63 FR 57356, 57361 (October 27, 1998).

[13] In addition to CSAPR rulemakings, other regional rulemakings addressing ozone transport include the ''NO_X SIP Call,'' 63 FR 57356 (October 27, 1998), and the ''Clean Air Interstate Rule'' (CAIR), 70 FR 25162 (May 12, 2005).

[14] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[15] *See* 82 FR 1733, 1735 (January 6, 2017).

[16] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017 (''October 2017 memorandum''), available in Docket No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at Step 1 of the 4-step interstate transport framework.[17] The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under Step 2 of the 4-step interstate transport framework.[18] The EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.[19]

Following the release of the modeling data shared in the March 2018 memorandum, the EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.,* 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.[20] This collaborative project was a multi-year joint effort by the EPA, MJOs, and states to develop a new, more recent emissions platform for use by the EPA and states in regulatory modeling as an improvement over the dated, 2011-based platform that the EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. The EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, the EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.[21] Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform were also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.[22]

Following the final Revised CSAPR Update, the EPA made further updates to the 2016-based emissions platform to include updated onroad mobile emissions from Version 3 of the EPA's Motor Vehicle Emission Simulator (MOVES) model (MOVES3) [23] and updated emissions projections for electric generating units (EGUs) that reflect the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other inventory improvements. The construct of the updated emissions platform, 2016v2, is described in the ''Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform,'' hereafter known as the 2016v2 Emissions Modeling TSD, and is included in Docket No. EPA–HQ–OAR–2021–0663. The EPA performed air quality modeling using the 2016v2 emissions to provide projections of ozone design values and contributions in 2023 that reflect the effects on air quality of the 2016v2 emissions platform. The results of the 2016v2 modeling were used by the EPA as part of the Agency's evaluation of state SIP submissions with respect to Steps 1 and 2 of the 4-step interstate transport framework at the proposal stage of this action. By using the 2016v2 modeling results, the EPA used the most current and technically appropriate information for the proposed rulemakings that were issued earlier in 2022.

The EPA invited and received comments on the 2016v2 emissions inventories and modeling that were used to support proposals related to 2015 ozone NAAQS interstate transport. (The EPA had earlier published the emissions inventories on its website in September of 2021 and invited initial feedback from states and other interested stakeholders.[24]) In response to these comments, the EPA made a number of updates to the 2016v2 inventories and model design to construct a 2016v3 emissions platform which was used to update the air quality modeling. The EPA made additional updates to its modeling in response to comments as well. The EPA is now using this updated modeling to inform its final action on these SIP submissions. Details on the air quality modeling and the methods for projecting design values and determining contributions in 2023 are described in Section III and in the TSD titled ''Air Quality Modeling TSD for the 2015 8-hour ozone NAAQS Transport SIP Final Actions'', hereafter known as the Final Action AQM TSD.[25] [26] Additional details related to the updated 2016v3 emissions platform are located in the TSD titled ''Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform,'' hereafter known as the 2016v3 Emissions Modeling TSD, included in Docket ID No. EPA–HQ–OAR–2021–0663.[27]

D. The EPA's Approach To Evaluating Interstate Transport SIPs for the 2015 Ozone NAAQS

The EPA is applying a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submissions for the 2015 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). These policy judgments conform with relevant case law and past agency practice as reflected in CSAPR and related rulemakings. Employing a nationally consistent approach is

[17] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (''March 2018 memorandum''), available in Docket No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[18] The March 2018 memorandum, however, provided, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.'' March 2018 memorandum at 2.

[19] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''); Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 (''October 2018 memorandum''), available in Docket No. EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[20] The results of this modeling, as well as the underlying modeling files, are included in Docket No. EPA–HQ–OAR–2021–0663.

[21] *See* 85 FR 68964, 68981 (October 30, 2020).

[22] *See* the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in Docket No. EPA–HQ–OAR–2021–0663.

[23] 86 FR 1106. Additional details and documentation related to the MOVES3 model can be found at *https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves.*

[24] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

[25] *See* Final Action AQM TSD in Docket ID No. EPA–HQ–OAR–2021–0663

[26] References to section numbers in roman numeral refer to sections of this preamble unless otherwise specified, and references to section numbers in numeric form refer to the Response to Comments document for this final action included in the docket.

[27] *See* 2016v3 Emissions Modeling TSD in Docket ID No. EPA–HQ–OAR–2021–0663.

particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO_X SIP Call have necessitated the application of a uniform framework of policy judgments to ensure an ''efficient and equitable'' approach. *See EPA* v. *EME Homer City Generation, LP,* 572 U.S. 489, 519 (2014) (*EME Homer City*). Some comments on EPA's proposed SIP disapprovals claim the EPA is imposing non-statutory requirements onto SIPs or that the EPA must allow states to take inconsistent approaches to implementing good neighbor requirements. Both views are incorrect; the EPA's use of its longstanding framework to evaluate these SIP submissions reflects a reasonable and consistent approach to implementing the requirements of CAA section 110(a)(2)(D)(i)(I), while remaining open to alternative approaches states may present. These comments are further addressed in Section V and the Response to Comment (RTC) document contained in the docket for this action, Docket ID No. EPA–HQ–OAR–2021–0663.

In the March, August, and October 2018 memoranda, the EPA recognized that states may be able to establish alternative approaches to addressing their interstate transport obligations for the 2015 ozone NAAQS that vary from a nationally uniform framework. The EPA emphasized in these memoranda, however, that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submission.[28] In general, the EPA continues to believe that deviation from a nationally consistent approach to ozone transport must be substantially justified and have a well-documented technical basis that is consistent with CAA obligations and relevant case law. Where states submitted SIP submissions that rely on any such potential concepts as the EPA or others may have identified or suggested in the past, the EPA evaluated whether the state adequately justified the technical and legal basis for doing so. For example, the EPA has considered the arguments put forward by Alabama, Missouri, Ohio, Oklahoma, Texas, and Utah related to alternative methods of identifying receptors.[29] The EPA also has considered the arguments attempting to justify an alternative contribution threshold at Step 2 pursuant to the August 2018 memorandum made by Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, and Utah,[30] as well as criticisms of the 1 percent of the NAAQS contribution threshold made by Nevada and Ohio.[31] These topics are further addressed in Section V.B as well as the RTC document.

The EPA notes that certain potential concepts included in an attachment to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to interstate transport obligations for the 2015 ozone NAAQS. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development. However, the EPA made clear in both the March 2018 memorandum [32] and in Attachment A that the list of ideas was not endorsed by the Agency but rather ''comments provided in various forums'' on which the EPA sought ''feedback from interested stakeholders.'' [33] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [34] Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. To the extent states sought to develop or rely on one or more of these ideas in support of their SIP submissions, the EPA reviewed their technical and legal justifications for doing so.[35]

The remainder of this section describes the EPA's analytical framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

1. Selection of Analytic Year

In general, the states and the EPA must implement the interstate transport provision in a manner ''consistent with the provisions of [title I of the CAA.]'' *See* CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed ''as expeditiously as practicable'' and no later than the schedule of attainment dates provided in CAA section 181(a)(1).[36] Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *See* 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that the EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b) *Maryland* v.

[28] March 2018 memorandum at 3 (''EPA also notes that, in developing their own rules, states have flexibility to follow the familiar four-step transport framework (using EPA's analytical approach or somewhat different analytical approaches within this steps) or alternative framework, so long as their chosen approach has adequate technical justification and is consistent with the requirements of the CAA.''); August 2018 memorandum at 1 (''The EPA and air agencies should consider whether the recommendations in this guidance are appropriate for each situation.''); October 2018 memorandum at 1 (''Following the recommendations in this guidance does not ensure that EPA will approve a SIP revision in all instances where the recommendations are followed, as the guidance may not apply to the facts and circumstances underlying a particular SIP.'').

[29] 87 FR 64421–64422 (Alabama); 87 FR 9540–9541 (Missouri); 87 FR 9869–9870 (Ohio); 87 FR 9820–9822 (Oklahoma); 87 FR 9826–9829 (Texas); and 87 FR 31480–31481 (Utah).

[30] 87 FR 64423–64424 (Alabama); 87 FR 9806–9807 (Arkansas); 87 FR 9852–9853 (Illinois); 87 FR 9855–9856 (Indiana); 87 FR 9509–9510 (Kentucky); 87 FR 9815–9816 (Louisiana); 87 FR 9861–9862 (Michigan); 87 FR 9557 (Mississippi); 87 FR 9541–9544 (Missouri); 87 FR 9819 (Oklahoma); 87 FR 31478 (Utah).

[31] 87 FR 31492 (Nevada); 87 FR 9871 (Ohio).

[32] ''In addition, the memorandum is accompanied by Attachment A, which provides a preliminary list of potential flexibilities in analytical approaches for developing a good neighbor SIP that may warrant further discussion between EPA and states.'' March 2018 memorandum at 1.

[33] March 2018 memorandum, Attachment A at A–1.

[34] *Id.*

[35] E.g., 87 FR 64423–64425 (Alabama); 87 FR 31453–31454 (California); 87 FR 9852–9854 (Illinois); 87 FR 9859–9860 (Indiana); 87 FR 9508, 9515 (Kentucky); 87 FR 9861–9862 (Michigan); 87 FR 9869–9870 (Ohio); 87 FR 9798, 9818–9820 (Oklahoma); 87 FR 31477–31481 (Utah); 87 FR 9526–9527 (West Virginia).

[36] For attainment dates for the 2015 ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

EPA, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020) (*Maryland*). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). The EPA interprets the court's holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,[37] which at the time of EPA's proposed and final actions on the SIPs addressed in this action is the Moderate area attainment date under CAA section 181 for ozone nonattainment. The Moderate area attainment date for the 2015 ozone NAAQS is August 3, 2024.[38] Thus, 2023 is now the appropriate year for analysis of interstate transport obligations for the 2015 ozone NAAQS, because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024, Moderate area attainment date for the 2015 ozone NAAQS.

The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied upon the EPA's modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, the EPA must act on SIP submissions using the information available at the time it takes such action, and it is now past 2021. In this circumstance, the EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23054, 23074; *see also Wisconsin,* 938 F.3d at 322 (rejecting Delaware's argument that the EPA should have used an analytic year of 2011 instead of 2017). Consequently, in this proposal the EPA will use the analytical year of 2023 to evaluate each state's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 ozone NAAQS.

2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, the EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where the EPA's analysis shows that a site does not fall under the definition of a nonattainment or maintenance receptor, that site is excluded from further analysis under the EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, the EPA proceeds to the next step of the 4-step interstate transport framework by identifying which upwind states contribute to those receptors above the contribution threshold.

The EPA's approach to identifying ozone nonattainment and maintenance receptors in this action gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina.*[39]

The EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where the EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that the EPA projects will be in nonattainment in the analytic year (*i.e.,* 2023).[40]

In addition, the EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015) (*EME Homer City II*).[41] Specifically, the EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described earlier, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those

[37] The EPA notes that the court in *Maryland* did not have occasion to evaluate circumstances in which the EPA may determine that an upwind linkage to a downwind air quality problem exists at Steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

[38] *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[39] *See North Carolina,* 531 F.3d at 910–11 (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[40] *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25241, 25249 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–14 (affirming as reasonable the EPA's approach to defining nonattainment in CAIR).

[41] *See* 76 FR 48208 (August 8, 2011). The CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance-only'' receptors, even if they are currently measuring nonattainment based on the most recent official design values.

As discussed further in Section III.B., in response to comments, the Agency has also taken a closer look at measured ozone levels at monitoring sites in 2021 and 2022 for the purposes of informing the identification of additional receptors in 2023. We find there is a basis to consider certain sites with elevated ozone levels that are not otherwise identified as receptors to be an additional type of maintenance-only receptor given the likelihood that ozone levels above the NAAQS could persist at those locations through at least 2023. We refer to these as violating-monitor maintenance-only receptors (''violating monitors''). For purposes of this action, we use this information only in a confirmatory way for states that are otherwise found to be linked using the modeling-based methodology. The EPA intends to take separate action to address states that are linked only to one or more violating-monitor receptors.

3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2, the EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.,* 0.70 ppb for the 2015 ozone NAAQS), the upwind state is not ''linked'' to a downwind air quality problem, and the EPA, therefore, concludes that the state does not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed ''significant'' and, thus, must be eliminated pursuant to the requirements of CAA section 110(a)(2)(D)(i)(I).

In this final action, the EPA relies in the first instance on the 1 percent threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 ozone NAAQS (*i.e.,* 0.70 ppb) at downwind receptors. This is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update and Revised CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS, and in the EPA's proposals for this action. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the CAIR, CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. result from the combined impact of relatively small contributions, typically from multiple upwind states and, in some cases, substantially larger contributions from a subset of particular upwind states, along with contributions from in-state sources. The EPA's analysis shows that much of the ozone transport problem being analyzed in this action is still the result of the collective impacts of contributions from upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR 74518; *see also* 86 FR 23085 (reviewing and explaining rationale from CSAPR, 76 FR 48237–38, for selection of 1 percent threshold).

The EPA's August 2018 memorandum recognizes that in certain circumstances, a state may be able to establish that an alternative contribution threshold of 1 ppb is justifiable. Where a state relies on this alternative threshold in their SIP submission, and where that state determined that it was not linked at Step 2 using the alternative threshold, the EPA evaluated whether the state provided a technically sound assessment of the appropriateness of using this alternative threshold based on the facts and circumstances underlying its application in the particular SIP submission. The states covered by this action that rely on a contribution threshold other than 1 percent of the NAAQS in their 2015 ozone NAAQS good neighbor SIP submission are Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, and Utah. Ohio also criticized the 1 percent of the NAAQS threshold, though it acknowledged it was linked above either a 1 percent of the NAAQS or 1 ppb contribution threshold. Nevada also criticized the 1 percent of the NAAQS contribution threshold, but ultimately relied on it to support its submission.

In the proposals for this action, the EPA evaluated each states' support for the use of an alternative threshold at Step 2 (*e.g.,* 1 ppb), and additionally shared its experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds at Step 2. The EPA solicited comment on the subject as it considered the appropriateness of rescinding the memorandum.[42] The EPA received numerous comments related to both the EPA's evaluation of SIP submissions relying on an alternative threshold, and the EPA's experience with alternative thresholds. The EPA is not, at this time rescinding the August 2018 memorandum; however, for purposes of evaluating contribution thresholds for the 2015 ozone NAAQS, the EPA continues to find the use of an alternative threshold problematic for the reasons stated at proposal. Regardless of the EPA's position on the August 2018 memorandum, the EPA continues to find that the arguments put forth in the SIP submissions of by Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, and Utah, as well as arguments in comments received on these actions, to be inadequate. *See* Section V.B.7 and the RTC Document for additional detail.

4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with the EPA's longstanding approach to eliminating significant contribution and interference with maintenance, at Step 3, a multifactor assessment of potential emissions controls is conducted for states linked at Steps 1 and 2. The EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if

[42] *See, e.g.,* 87 FR 9551.

adequately supported. In general, where the EPA's or state-provided alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for SIP approval. In general, the emissions-reducing effects of all existing emissions control requirements are already reflected in the future year projected air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s) despite these existing controls, but that state believes it has no outstanding good neighbor obligations, the EPA expects the state to provide sufficient justification to support a conclusion by the EPA that the state has adequate provisions prohibiting ''any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will'' ''contribute significantly to nonattainment in, or interfere with maintenance by,'' any other State with respect to the NAAQS. *See* CAA section 110(a)(2)(D)(i)(I). While the EPA has not prescribed a particular method for this assessment, as many commenters note, the EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.[43] The EPA responds to comment on issues related to Step 3 in Section V.B.8. and in the RTC document.

5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or the EPA) develop permanent and federally-enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS.[44] For a state linked at Steps 1 and 2 to rely on an emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. *See* CAA section 110(a)(2)(D) (''Each such [SIP] shall . . . contain adequate provisions. . . .''). *See also* CAA section 110(a)(2)(A); *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a state to meet CAA requirements must be included in the SIP).

III. The EPA's Updated Air Quality and Contribution Analysis

As noted in Section II, the EPA relied in part on its 2016v2 emissions platform-based air quality modeling to support its proposed interstate transport actions taken in 2022. Following receipt of comments, the EPA updated this modeling, incorporating new information received to create the 2016v3 emissions inventory and making additional updates to improve model performance. Using the 2016v3 emissions inventory, the EPA evaluated modeling projections for air quality monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2015 ozone NAAQS.

This section presents a summary of the methodology and results of the 2016v3 modeling of 2023, along with the application of the EPA's Step 1 and Step 2 methodology for identifying receptors and upwind states that contribute to those receptors. We also explain that current measured ozone levels based on data for 2021 and preliminary data for 2022 at other monitoring sites (*i.e.,* monitoring sites that are not projected to be receptors in 2023 based on air quality modeling) confirm the likely continuation of elevated ozone levels in 2023 at these locations and confirm that nearly all upwind states in this action are also linked above 1 percent of the NAAQS to one or more of these monitors.

While all of this information compiled by the EPA (both the modeling and monitoring data) plays a critical role in the basis for this final action, the EPA has also thoroughly evaluated the modeling information and other analyses and arguments presented by the upwind states in their SIP submittals. Our evaluation of the states' analyses was generally set forth in the proposals, and the EPA in this final action has responded to comments on our evaluation of the various information and arguments made by states. The EPA's final decision to disapprove these states' SIP submittals is based on our evaluation of the entire record, recognizing that states possess the authority in the first instance to propose how they would address their significant contribution to air quality problems in other states. Nonetheless, as explained in the proposals, and in this document and supporting materials in the docket, we conclude that no state included in this action effectively demonstrated that it will not be linked to at least one air quality receptor in 2023, and none of these states' various arguments for alternative approaches ultimately present a satisfactory basis for the EPA to approve these states' SIP submissions.

A. Description of Air Quality Modeling for the Final Action

In this section, the Agency describes the air quality modeling performed consistent with Steps 1 and 2 of the 4-step interstate transport framework to (1) Identify locations where it expects nonattainment or maintenance problems with respect to the 2015 ozone NAAQS for the 2023 analytic year, and (2) quantify the contributions from anthropogenic emissions from upwind states to downwind ozone concentrations at monitoring sites projected to be in nonattainment or have maintenance problems for the 2015 ozone NAAQS in 2023. This section includes information on the air quality modeling platform used in support of the final SIP disapproval action with a focus on the base year and future base case emissions inventories. The EPA also provides the projection of 2023 ozone concentrations and the interstate contributions for 8-hour ozone. The Final Action AQM TSD in Docket ID No. EPA–HQ–OAR–2021–0663 contains more detailed information on the air quality modeling aspects supporting our final action on these SIP submissions.

1. Public Review of Air Quality Modeling Information for the Proposed Action

The EPA provided several opportunities to comment on the emissions modeling platform and air quality modeling results that were used for the proposed SIP submission actions. On September 20, 2021, the EPA publicly released via our web page updated emissions inventories (2016v2) and requested comment from states and

[43] Because no state included new enforceable emissions control measures in the submissions under review here, we focus our analysis on whether states justified that no additional controls were required. As examples of general approaches for how a Step 3 analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO_X SIP Call, 63 FR 57356, 57399–405. *See also* Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

[44] The EPA notes that any controls included in an approved SIP are federally-enforceable.

MJOs on these data.[45] In January 2022, the EPA released air quality modeling results including projected ozone design values and contributions from 2023 based on the 2016v2 emissions. At that time the EPA indicated its intent to use these data to support upcoming transport rulemakings. Then, on February 22, 2022, the EPA published proposed disapprovals for 19 interstate transport SIP submissions using the modeling data released in January 2022 and the emissions inventories shared in September 2021.[46] The EPA provided a 60-day comment period on these proposals. On May 24, 2022, the EPA proposed disapprovals for an additional four states' interstate transport SIP submissions using the same modeling platform, and provided a 62-day comment period.[47] The EPA provided a 30-day comment period beginning on October 25, 2022, on the proposed disapproval of Alabama's June 21, 2022, SIP submission, which relied on the same modeling platform as the other noted proposals.[48] In addition to its proposed disapprovals, the EPA also proposed approval of Iowa's, Arizona's, and Colorado's SIP submissions using the 2016v2 modeling and provided 30-day comment periods. 87 FR 9477 (February 22, 2022) (Iowa); 87 FR 37776 (June 24, 2022) (Arizona); and 87 FR 27050 (May 6, 2022) (Colorado).

2. Overview of Air Quality Modeling Platform

The EPA used version 3 of the 2016-based modeling platform (*i.e.,* 2016v3) for the air quality modeling for this final SIP disapproval action. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and future year projected anthropogenic emissions for 2023.[49] The emissions data contained in the 2016v3 platform represent an update to the 2016 version 2 inventories used for the proposal modeling.

The air quality modeling for this final disapproval action was performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. The EPA used the CAMx version 7.10 for air quality modeling which is the same model that the EPA used for the proposed rule air quality modeling.[50] Additional information on the 2016-based air quality modeling platform can be found in the Final Action AQM TSD.

Comments: Commenters noted that the 2016 base year summer maximum daily average 8-hour (MDA8) ozone predictions from the proposal modeling were biased low compared to the corresponding measured concentrations in certain locations. In this regard, commenters said that model performance statistics for a number of monitoring sites, particularly those in portions of the West and in the area around Lake Michigan, were outside the range of published performance criteria for normalized mean bias (NMB) and normalized mean error (NME) of less than plus or minus 15 percent and less than 25 percent, respectively.[51] Comments say the EPA must investigate the factors contributing to low bias and make necessary corrections to improve model performance in the modeling supporting final SIP actions. Some commenters said that the EPA should include NO_X emissions from lightning strikes and assess the treatment of other background sources of ozone to improve model performance for the final action. Additional information on the comments on model performance can be found in the RTC document for this final SIP disapproval action.

EPA Response: In response to these comments the EPA examined the temporal and spatial characteristics of model under prediction to investigate the possible causes of under prediction of MDA8 ozone concentrations in different regions of the U.S. in the proposal modeling. The EPA's analysis indicates that the under prediction was most extensive during May and June with less bias during July and August in most regions of the U.S. For example, in the Upper Midwest region model under prediction was larger in May and June compared to July through September. Specifically, the normalized mean bias for days with measured concentrations greater than or equal to 60 ppb improved from a 21.4 percent under prediction for May and June to a 12.6 percent under prediction in the period July through September. As described in the AQM TSD, the seasonal pattern in bias in the Upper Midwest region improves somewhat gradually with time from the middle of May to the latter part of June. In view of the seasonal pattern in bias in the Upper Midwest and in other regions of the U.S., the EPA focused its investigation of model performance on model inputs that, by their nature, have the largest temporal variation within the ozone season. These inputs include emissions from biogenic sources and lightning NO_X, and contributions from transport of international anthropogenic emissions and natural sources into the U.S. Both biogenic and lightning NO_X emissions in the U.S. dramatically increase from spring to summer.[52] [53] In contrast, ozone transported into the U.S. from international anthropogenic and natural sources peaks during the period March through June, with lower contributions during July through September.[54] [55] To investigate the impacts of the sources, the EPA conducted sensitivity model runs which focused on the effects on model performance of adding NO_X emissions from lightning strikes, using updated biogenic emissions, and using an alternative approach (described in more detail later in this section) for quantifying transport of ozone and precursor pollutants into the U.S. from international anthropogenic and natural sources. In the air quality modeling for proposal, the amount of transport from international sources was based on a simulation of the hemispheric version of the Community Multi-scale Air Quality

[45] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

[46] These proposals are listed in footnote 5 of this action.

[47] The EPA also relied on this same modeling data to support proposed Federal Implementation Plans (FIPs) resolving interstate transport obligations for 27 states for the 2015 ozone NAAQS. 87 FR 20036 (April 6, 2022). The EPA allowed 60 days to receive comments on the proposed FIP rule, including acceptance of comment on the 2016v2 emissions inventory-based modeling platform. The EPA then allowed for an additional 15 days via an extension of the comment period. 87 FR 29108 (May 12, 2022).

[48] 87 FR 64412, 64413.

[49] The 2016v3 platform also includes projected emissions for 2026. However, the 2026 data are not applicable and were not used in this final action.

[50] Ramboll Environment and Health, January 2021, *https://www.camx.com.*

[51] Christopher Emery, Zhen Liu, Armistead G. Russell, M. Talat Odman, Greg Yarwood & Naresh Kumar (2017) Recommendations on statistics and benchmarks to assess photochemical model performance, Journal of the Air & Waste Management Association, 67:5, 582–598, DOI: 10.1080/10962247.1265027.

[52] Guenther, A.B., 1997. Seasonal and spatial variations in natural volatile organic compound emissions. Ecol. Appl. 7, 34–45. *http://dx.doi.org/10.1890/1051-0761(1997)007[0034:SASVIN]2.0.CO;2.* Guenther, A., Hewitt, C.N., Erickson, D., Fall, R.

[53] Kang D, Mathur R, Pouliot GA, Gilliam RC, Wong DC. Significant ground-level ozone attributed to lightning-induced nitrogen oxides during summertime over the Mountain West States. NPJ Clim Atmos Sci. 2020 Jan 30;3:6. doi: 10.1038/s41612–020–0108–2. PMID: 32181370; PMCID: PMC7075249.

[54] Jaffe DA, Cooper OR, Fiore AM, Henderson BH, Tonnesen GS, Russell AG, Henze DK, Langford AO, Lin M, Moore T. Scientific assessment of background ozone over the U.S.: Implications for air quality management. Elementa (Wash DC). 2018;6(1):56. doi: 10.1525/elementa.309. PMID: 30364819; PMCID: PMC6198683.

[55] Henderson, B.H., P. Dolwick, C. Jang, A., Eyth, J. Vukovich, R. Mathur, C. Hogrefe, N. Possiel, G. Pouliot, B. Timin, K.W. Appel, 2019. Global Sources of North American Ozone. Presented at the 18th Annual Conference of the UNC Institute for the Environment Community Modeling and Analysis System (CMAS) Center, October 21–23, 2019.

Model (H–CMAQ)[56] for 2016. The outputs from this hemispheric modeling were then used to provide boundary conditions for the national scale air quality modeling at proposal.[57] Overall, H–CMAQ tends to under predict daytime ozone concentrations at rural and remote monitoring sites across the U.S. during the spring of 2016 whereas the predictions from the GEOS-Chem global model[58] were generally less biased.[59] During the summer of 2016 both models showed varying degrees of over prediction with GEOS-Chem showing somewhat greater over prediction, compared to H–CMAQ. In view of those results, the EPA examined the impacts of using GEOS-Chem as an alternative to H–CMAQ for providing boundary conditions for the modeling supporting this final action.

For the lightning NO_X, biogenics, and GEOS-Chem sensitivity runs, the EPA reran the proposal modeling using each of these inputs, individually. Results from these sensitivity runs indicate that each of the three updates provides an improvement in model performance. However, by far the greatest improvement in modeling performance is attributable to the use of GEOS-Chem. In view of these results the EPA has included lightning NO_X emissions, updated biogenic emissions, and international transport from GEOS-Chem in the air quality modeling supporting final SIP actions. Details on the results of the individual sensitivity runs can be found in the AQM TSD. For the air quality modeling supporting final SIP actions, model performance based on days in 2016 with measured MDA8 ozone greater than or equal to 60 ppb is considerably improved (*i.e.,* less bias and error) compared to the proposal modeling in nearly all regions. For example, in the Upper Midwest, which includes monitoring sites along Lake Michigan, the normalized mean bias improved from a 19 percent under prediction to a 6.9 percent under prediction and in the Southwest region, which includes monitoring sites in Denver, Las Cruces, El Paso, and Salt Lake City, normalized mean bias improved from a 13.6 percent under prediction to a 4.8 percent under prediction.[60] In all regions, the normalized mean bias and normalized mean error statistics for high ozone days based on the modeling supporting final SIP actions are within the range of performance criteria benchmarks (*i.e.,* less than plus or minus 15 percent for normalized mean bias and less than 25 percent for normalized mean error).[61] Additional information on model performance information is provided in the AQM TSD. In summary, the EPA included emissions of lightning NO_X, as requested by commenters, and investigated and addressed concerns about model performance for the modeling supporting final SIP actions.

3. Emissions Inventories

The EPA developed emissions inventories to support air quality modeling for this final action, including emissions estimates for EGUs, non-EGU point sources (*i.e.,* stationary point sources), stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, other mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the direct result of human activities. The EPA's air quality modeling relies on this comprehensive set of emissions inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

Prior to the modeling of air quality, the emissions inventories must be processed into a format that is appropriate for the air quality model to use. To prepare the emissions inventories for air quality modeling, the EPA processed the emissions inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.9 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emissions inventories and on data sets used during the emissions modeling process are provided in the document titled ''Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform,'' hereafter known as the ''2016v3 Emissions Modeling TSD.'' This TSD is available in the docket for this action.[62]

4. Foundation Emissions Inventory

The 2016v3 emissions platform is comprised of data from various sources including data developed using models, methods, and source datasets that became available in calendar years 2020 through 2022, in addition to data retained from the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019. The 2016v1 platform was developed through a national collaborative effort between the EPA and state and local agencies along with MJOs. The 2016v2 platform used to support the proposed action included updated data, models and methods as compared to 2016v1. The 2016v3 platform includes updates implemented in response to comments along with other updates to the 2016v2 platform such as corrections and the incorporation of updated data sources that became available prior to the 2016v3 inventories being developed. Several commenters noted that the 2016v2 platform did not include NO_X emissions that resulted from lightning strikes. To address this, lightning NO_X emissions were computed and included in the 2016v3 platform.

For this final action, the EPA developed emissions inventories for the base year of 2016 and the projected year of 2023. The 2023 inventories represent changes in activity data and of predicted emissions reductions from on-the-books actions, planned emissions control installations, and promulgated Federal measures that affect anthropogenic emissions. The 2016 emissions inventories for the U.S. primarily include data derived from the 2017 National Emissions Inventory (2017

[56] Mathur, R., Gilliam, R., Bullock, O.R., Roselle, S., Pleim, J., Wong, D., Binkowski, F., and 1 Streets, D.: Extending the applicability of the community multiscale air quality model to 2 hemispheric scales: motivation, challenges, and progress. In: Steyn DG, Trini S (eds) Air 3 pollution modeling and its applications, XXI. Springer, Dordrecht, pp 175–179, 2012.

[57] Boundary conditions are the concentrations of pollutants along the north, east, south, and west boundaries of the air quality modeling domain. Boundary conditions vary in space and time and are typically obtained from predictions of global or hemispheric models. Information on how boundary conditions were developed for modeling supporting EPA's final SIP actions can be found in the AQM TSD.

[58] I. Bey, D.J. Jacob, R.M. Yantosca, J.A. Logan, B.D. Field, A.M. Fiore, Q. Li, H.Y. Liu, L.J. Mickley, M.G. Schultz. Global modeling of tropospheric chemistry with assimilated meteorology: model description and evaluation. J. Geophys. Res. Atmos., 106 (2001), pp. 23073–23095, 10.1029/2001jd000807.

[59] Henderson, B.H., P. Dolwick, C. Jang, A., Eyth, J. Vukovich, R. Mathur, C. Hogrefe, G. Pouliot, N. Possiel, B. Timin, K.W. Appel, 2022. Meteorological and Emission Sensitivity of Hemispheric Ozone and $PM_{2.5}$. Presented at the 21st Annual Conference of the UNC Institute for the Environment Community Modeling and Analysis System (CMAS) Center, October 17–19, 2022.

[60] A comparison of model performance from the proposal modeling to the final modeling for individual monitoring sites can be found in the docket for this final action.

[61] Christopher Emery, Zhen Liu, Armistead G. Russell, M. Talat Odman, Greg Yarwood & Naresh Kumar (2017) Recommendations on statistics and benchmarks to assess photochemical model performance, Journal of the Air & Waste Management Association, 67:5, 582–598, DOI: 10.1080/10962247.1265027.

[62] *See* Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform TSD, also available at *https://www.epa.gov/air-emissions-modeling/2016v3-platform.*

NEI)[63] and data specific to the year of 2016. The following sections provide an overview of the construct of the 2016v3 emissions and projections. The fire emissions were unchanged between the 2016v2 and 2016v3 emissions platforms. For the 2016v3 platform, the biogenic emissions were updated to use the latest available versions of the Biogenic Emissions Inventory System and associated land use data to help address comments related to a degradation in model performance in the 2016v2 platform as compared to the 2016v1 platform. Details on the construction of the inventories are available in the 2016v3 Emissions Modeling TSD. Details on how the EPA responded to comments related to emissions inventories are available in the RTC document for this action.

Development of emissions inventories for annual NO_X and sulfur dioxide (SO_2) emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emissions monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emissions factors and annual heat input data reported to the EPA. For EGUs not reporting under part 75, the EPA used data submitted to the NEI by state, local, and tribal agencies. The final action inventories include updates made in response to comments on the proposed actions including the proposed SIP submission disapprovals and the proposed FIP. The Air Emissions Reporting Rule, (80 FR 8787; February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to the EPA via the NEI every year, while the smaller Type B point sources must only be reported to EPA every 3 years. In response to comments, emissions data for EGUs that did not have data submitted to the NEI specific to the year 2016 were filled in with data from the 2017 NEI. For more information on the details of how the 2016 EGU emissions were developed and prepared for air quality modeling, *see* the 2016v3 Emissions Modeling TSD.

The EPA projected 2023 baseline EGU emissions using version 6 of the Integrated Planning Model (IPM) (*www.epa.gov/airmarkets/powersector-modeling*). IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emissions control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emissions impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. The EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.[64] The EPA relied on the same model platform as in the proposals but made substantial updates to reflect public comments on near-term fossil fuel market price volatility and updated fleet information reflecting Summer 2022 U.S. Energy Information Agency (EIA) 860 data, unit-level comments, and additional updates to the National Electric Energy Data System (NEEDS) inventory.

The IPM version 6—Updated Summer 2021 Reference Case incorporated recent updates through the summer 2022 to account for updated Federal and state environmental regulations (including Renewable Portfolio Standards (RPS), Clean Energy Standards (CES) and other state mandates), fleet changes (committed EGU retirements and new builds), electricity demand, technology cost and performance assumptions from recent data for renewables adopting from National Renewable Energy Lab (NREL's) Annual Technology Baseline 2020 and for fossil sources from the EIA's Annual Energy Outlook (AEO) 2020. Natural gas and coal price projections reflect data developed in fall 2020 but updated in summer 2022 to capture near-term price volatility and current market conditions. The inventory of EGUs provided as an input to the model was the NEEDS fall 2022 version and is available on the EPA's website.[65] This version of NEEDS reflects announced retirements and under construction new builds known as of early summer 2022. This projected base case accounts for the effects of the final Mercury and Air Toxics Standards rule, CSAPR, the CSAPR Update, the Revised CSAPR Update, New Source Review enforcement settlements, the final Effluent Limitation Guidelines (ELG) Rule, the Coal Combustion Residual (CCR) Rule, and other on-the-books Federal and state rules (including renewable energy tax credit extensions from the Consolidated Appropriations Act of 2021) through early 2021 impacting emissions of SO_2, NO_X, directly emitted particulate matter, carbon dioxide (CO_2), and power plant operations. It also includes final actions, up through the Summer 2022, the EPA has taken to implement the Regional Haze Rule and best available retrofit technology (BART) requirements. Documentation of IPM version 6 and NEEDS, along with updates, is in Docket ID No. EPA–HQ–OAR–2021–0663 and available online at *https://www.epa.gov/airmarkets/power-sector-modeling*.

Non-EGU point source emissions are mostly consistent with those in the proposal modeling except where they were updated in response to comments. Several commenters mentioned that point source emissions carried forward from 2014 NEI were not the best estimates of 2017 emissions. Thus, emissions sources in 2016v2 that had been projected from the 2014 NEI in the proposal were replaced with emissions based on the 2017 NEI. Point source emissions submitted to the 2016 NEI or to the 2016v1 platform development process specifically for the year 2016 were retained in 2016v3.

The 2023 non-EGU point source emissions were grown from 2016 to 2023 using factors based on AEO 2022 and reflect emissions reductions due to known national and local rules, control programs, plant closures, consent decrees, and settlements that could be computed as reductions to specific units by July 2022.

Aircraft emissions and ground support equipment at airports are represented as point sources and are based on adjustments to emissions in the January 2021 version of the 2017 NEI. The EPA developed and applied factors to adjust the 2017 airport emissions to 2016 and 2023 based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast 2021,[66] the latest available version at the time the factors were developed.

[63] *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-technical-support-document-tsd.*

[64] Detailed information and documentation of the EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on the EPA's website at: *https://www.epa.gov/airmarkets/power-sector-modeling.*

[65] *Available* at *https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6.*

[66] *https://www.faa.gov/data_research/aviation/taf/.*

Emissions at rail yards were represented as point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016 and 2023 rail yard emissions were developed through the 2016v1 Inventory Collaborative process. Class I rail yard emissions were projected based on the AEO freight rail energy use growth rate projections for 2023 with the fleet mix assumed to be constant throughout the period.

The EPA made multiple updates to point source oil and gas emissions in response to comments. For the 2016v3 modeling, the point source oil and gas emissions for 2016 were based on the 2016v2 point inventory except that most 2014 NEI-based emissions were replaced with 2017 NEI emissions. Additionally, in response to comments, state-provided emissions equivalent to those in the 2016v1 platform were used for Colorado, and some New Mexico emissions were replaced with data backcast from 2020 to 2016. To develop inventories for 2023 for the 2016v3 platform, the year 2016 oil and gas point source inventories were first projected to 2021 values based on actual historical production data, then those 2021 emissions were projected to 2023 using regional projection factors based on AEO 2022 projections. This was an update from the 2016v2 approach in which actual data were used only through the year 2019, because 2021 data were not yet available. NO_X and VOC reductions resulting from co-benefits to New Source Performance Standards (NSPS) for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected, along with Natural Gas Turbine and Process Heater NSPS NO_X controls and Oil and Gas NSPS VOC controls. In some cases, year 2019 point source inventory data were used instead of the projected future year emissions except for the Western Regional Air Partnership (WRAP) states of Colorado, New Mexico, Montana, Wyoming, Utah, North Dakota, and South Dakota. The WRAP future year inventory [67] was used in these WRAP states in all future years except in New Mexico where the WRAP base year emissions were projected using the EIA historical and AEO forecasted production data. Estimated impacts from the recent oil and gas rule in the New Mexico Administrative code 20.2.50 [68] were also included. Details on the development of the projected point and nonpoint oil and gas emissions inventories are available in the 2016v3 Emissions Modeling TSD in Docket ID No. EPA–HQ–OAR–2021–0663.

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. The EPA developed the onroad mobile source emissions for states other than California using the EPA's Motor Vehicle Emissions Simulator (MOVES). MOVES3 was released in November 2020 and has been followed by some minor releases that improved the usage of the model but that do not have substantive impacts on the emissions estimates. For 2016v2, MOVES3 was run using inputs provided by state and local agencies through the 2017 NEI where available, in combination with nationally available data sets to develop a complete inventory. Onroad emissions were developed based on emissions factors output from MOVES3 run for the year 2016, coupled with activity data (*e.g.,* vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies through the 2016v1 process, and the remaining activity data were derived from those used to develop the 2017 NEI. The onroad emissions were computed within SMOKE by multiplying emissions factors developed using MOVES with the appropriate activity data. Prior to computing the final action emissions for 2016, updates to some onroad inputs were made in response to comments and to implement corrections. Onroad mobile source emissions for California were consistent with the updated emissions data provided by the state for the final action.

The 2023 onroad emissions reflect projected changes to fuel properties and usage, along with the impact of the rules included in MOVES3 for each of those years. MOVES emissions factors for the year 2023 were used. A comprehensive list of control programs included for onroad mobile sources is available in the 2016v3 Emissions Modeling TSD. Year 2023 activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023 by first projecting the 2016 activity to year 2019 based on county level vehicle miles traveled (VMT) from the Federal Highway Administration. The VMT were held flat from 2019 to 2021 to account for pandemic impacts, and then projected from 2021 to 2023 using AEO 2022-based factors.[69] Recent updates to inspection and maintenance programs in North Carolina and Tennessee were reflected in the MOVES inputs for the modeling supporting this final action. The 2023 onroad mobile emissions were computed within SMOKE by multiplying the respective emissions factors developed using MOVES with the year-specific activity data. Prior to computing the final action emissions for 2023, the EPA made updates to some onroad inputs in response to comments and to implement corrections.

The commercial marine vessel (CMV) emissions in the 2016 base case emissions inventory for this action were based on those in the 2017 NEI. Factors were applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions are consistent with the emissions for the 2016v1 platform CMV emissions released in February 2020 although, in response to comments, the EPA implemented an improved process for spatially allocating CMV emissions along state and county boundaries for the modeling supporting this final action.

The EPA developed nonroad mobile source emissions inventories (other than CMV, locomotive, and aircraft emissions) for 2016 and 2023 from monthly, county, and process level emissions output from MOVES3. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment.[70] The nonroad emissions for the final action were unchanged from those at the proposal. The nonroad mobile emissions control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of

[67] *http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.*

[68] *https://www.env.nm.gov/air-quality/ozone-draft-rule/* and *https://www.srca.nm.gov/parts/title20/20.002.0050.html.*

[69] VMT data for 2020 were the latest available at the time of final rule data development but were heavily impacted by the pandemic and unusable to project to 2023; in addition, it was determined that chaining factors based on AEO 2020 and AEO2021 obtain the needed factors led to unrealistic artifacts, thus only AEO 2022 data were used.

[70] Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES3. Year 2016 and 2023 locomotive emissions were developed through the 2016v1 process, and the year 2016 emissions are mostly consistent with those in the 2017 NEI. The projected locomotive emissions for 2023 were developed by applying factors to the base year emissions using activity data based on AEO freight rail energy use growth rate projections along with emissions rates adjusted to account for recent historical trends.

control programs included for mobile sources is available in the 2016v3 Emissions Modeling TSD.

For stationary nonpoint sources, some emissions in the 2016 base case emissions inventory come directly from the 2017 NEI, others were adjusted from the 2017 NEI to represent 2016 levels, and the remaining emissions including those from oil and gas, fertilizer, and solvents were computed specifically to represent 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. The emissions sources derived from the 2017 NEI include agricultural livestock, fugitive dust, residential wood combustion, waste disposal (including composting), bulk gasoline terminals, and miscellaneous non-industrial sources such as cremation, hospitals, lamp breakage, and automotive repair shops. A recent method to compute solvent VOC emissions was used.[71]

Where comments were provided about projected control measures or changes in nonpoint source emissions, those inputs were first reviewed by the EPA. Those found to be based on reasonable data for affected emissions sources were incorporated into the projected inventories for 2023 to the extent possible. Where possible, projection factors based on the AEO used data from AEO 2022, the most recent AEO at the time available at the time the inventories were developed. Federal regulations that impact the nonpoint sources were reflected in the inventories. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included along with solvent controls applicable within the northeast ozone transport region (OTR) states. Details are available in the 2016v3 Emissions Modeling TSD.

Nonpoint oil and gas emissions inventories for many states were developed based on outputs from the 2017 NEI version of the EPA Oil and Gas Tool using activity data for year 2016. Production-related emissions data from the 2017 NEI were used for Oklahoma, 2016v1 emissions were used for Colorado and Texas production-related sources to respond to comments. Data for production-related nonpoint oil and gas emissions in the States of Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming were obtained from the WRAP baseline inventory.[72] A California Air Resources Board-provided inventory was used for 2016 oil and gas emissions in California. Nonpoint oil and gas inventories for 2023 were developed by first projecting the 2016 oil and gas inventories to 2021 values based on actual production data. Next, those 2021 emissions were projected to 2023 using regional projection factors by product type based on AEO 2022 projections. A 2017–2019 average inventory was used for oil and natural gas exploration emissions in 2023 everywhere except for California and in the WRAP states in which data from the WRAP future year inventory[73] were used. NO_X and VOC reductions that are co-benefits to the NSPS for RICE are reflected, along with Natural Gas Turbines and Process Heaters NSPS NO_X controls and NSPS Oil and Gas VOC controls. The WRAP future year inventory was used for oil and natural gas production sources in 2023 except in New Mexico where the WRAP Base year emissions were projected using the EIA historical and AEO forecasted production data. Estimated impacts from the New Mexico Administrative Code 20.2.50 were included.

B. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

This section describes the air quality modeling and analyses that the EPA performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 ozone NAAQS in 2023. Where the EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2023, that site is excluded from further analysis under the EPA's good neighbor framework.

1. Approach for Identifying Receptors

In the proposed actions, the EPA applied the same approach used in the CSAPR Update and the Revised CSAPR Update to identify nonattainment and maintenance receptors for the 2008 ozone NAAQS.[74] The EPA's approach gives independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina.* Further, in its decision on the remand of CSAPR from the Supreme Court in the *EME Homer City II* case, the D.C. Circuit confirmed that the EPA's approach to identifying maintenance receptors in CSAPR comported with the court's prior instruction to give independent meaning to the ''interfere with maintenance'' prong in the good neighbor provision.[75]

In the CSAPR Update and the Revised CSAPR Update, the EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the NO_X SIP Call and CAIR, where the EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that the EPA projects will be in nonattainment in the future compliance year.

The Agency explained in the NO_X SIP Call and CAIR and then reaffirmed in the CSAPR Update that the EPA has the most confidence in our projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data. The EPA separately identified maintenance receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that accounts for historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.,* ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

[71] *https://doi.org/10.5194/acp-21-5079-2021.*

[72] *http://www.wrapair2.org/pdf/WRAP_OGWG_Report_Baseline_17Sep2019.pdf.*

[73] *http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.*

[74] *See* 86 FR 23078–79.

[75] *EME Homer City II,* 795 F.3d at 136.

Therefore, applying this methodology for this action, the EPA assessed the magnitude of the maximum projected design values for 2023 at each receptor in relation to the 2015 ozone NAAQS and, where such a value exceeds the NAAQS, the EPA determined that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II.*[76] That is, monitoring sites with a maximum design value that exceeds the NAAQS are projected to have maintenance problems in the future analytic years.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term ''maintenance-only'' to refer to receptors that are not also nonattainment receptors. Consistent with the concepts for maintenance receptors, as described earlier, the EPA identifies ''maintenance-only'' receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as ''maintenance only'' receptors, even if they are currently measuring nonattainment based on the most recent official certified design values.[77]

Comment: The EPA received comments claiming that the projected design values for 2023 were biased low compared to recent measured data. Commenters noted that a number of monitoring sites that are projected to be below the NAAQS in 2023 based on the EPA's modeling for the proposed action are currently measuring nonattainment based on data from 2020 and 2021. One commenter requested that the EPA determine whether its past modeling tends to overestimate or underestimate actual observed design values. If EPA finds that the agency's model tends to underestimate future year design values, the commenter requests that EPA re-run its ozone modeling, incorporating parameters that account for this tendency.

EPA Response: In response to comments, the EPA compared the projected 2023 design values based on the proposal modeling to recent trends in measured data. As a result of this analysis, the EPA agrees that current data indicate that there are monitoring sites at risk of continued nonattainment in 2023 even though the model projected average and maximum design values at these sites are below the NAAQS (*i.e.,* these sites would not be modeling-based receptors at Step 1). While the EPA has confidence in the reliability of the modeling for projecting air quality conditions and contributions in future years, it would not be reasonable to ignore recent measured ozone levels in many areas that are clearly not fully consistent with certain concentrations in the Step 1 analysis for 2023. Therefore, the EPA has developed an additional maintenance-only receptor category, which includes what we refer to as ''violating monitor'' receptors, based on current ozone concentrations measured by regulatory ambient air quality monitoring sites.

Specifically, the EPA has identified monitoring sites with measured 2021 and preliminary 2022 design values *and* 4th high maximum daily 8-hour average (MDA8) ozone in both 2021 and 2022 (preliminary data) that exceed the NAAQS as having the greatest risk of continuing to have a problem attaining the standard in 2023. These criteria sufficiently consider measured air quality data so as to avoid including monitoring sites that have measured nonattainment data in recent years but could reasonably be anticipated to not have a nonattainment or maintenance problem in 2023, in line with our modeling results. Our methodology is intended only to identify those sites that have sufficiently poor ozone levels that there is clearly a reasonable expectation that an ozone nonattainment or maintenance problem will persist in the 2023 ozone season. Moreover, the 2023 ozone season is so near in time that recent measured ozone levels can be used to reasonably project whether an air quality problem is likely to persist. We view this approach to identifying additional receptors in 2023 as the best means of responding to the comments on this issue in this action, while also identifying all transport receptors.

For purposes of this action, we will treat these violating monitors as an additional type of maintenance-only receptor. We acknowledge that the traditional modeling plus monitoring methodology we used at proposal and in prior ozone transport rules would otherwise have identified such sites as being in attainment in 2023. Because our modeling did not identify these sites as receptors, we do not believe it is sufficiently certain that these sites will be in nonattainment that they should be considered nonattainment receptors. In the face of this uncertainty in the record, we regard our ability to consider such sites as receptors for purposes of good neighbor analysis under CAA section 110(a)(2)(D)(i)(I) to be a function of the requirement to prohibit emissions that interfere with maintenance of the NAAQS; even if an area may be projected to be in attainment, we have reliable information indicating that there is a clear risk that attainment will not in fact be achieved in 2023. Thus, our authority for treating these sites as receptors at Step 1 in 2023 flows from the responsibility in CAA section 110(a)(2)(i)(I) to prohibit emissions that interfere with maintenance of the NAAQS. *See, e.g., North Carolina,* 531 F.3d at 910–11 (failing to give effect to the interfere with maintenance clause ''provides no protection for downwind areas that, *despite EPA's predictions,* still find themselves struggling to meet NAAQS due to upwind interference . . . .'') (emphasis added). Recognizing that no modeling can perfectly forecast the future, and ''a degree of imprecision is inevitable in tackling the problem of interstate air pollution,'' this approach in the Agency's judgement best balances the need to avoid both ''under-control'' and ''overcontrol,'' *EME Homer City,* 572 U.S. at 523. The EPA's analysis of these additional receptors further is explained in Section III.C.

However, because we did not propose to apply this expansion of the basis for regulation under the good neighbor provision receptor-identification methodology as the sole basis for finding an upwind state linked, in this action we are only using this receptor category on a confirmatory basis. That is, for states that we find linked based on our traditional modeling-based methodology in 2023, we find in this final analysis that the linkage at Step 2 is strengthened and confirmed if that state is also linked to one or more ''violating-monitor'' receptors. If a state is only linked to a violating-monitor receptor in this final analysis, we are deferring taking final action on that state's SIP submittal. This is the case for the State of Tennessee. Among the states that previously had their transport SIPs approved for the 2015 ozone NAAQS, the EPA has also identified a linkage to violating-monitor receptors for the State of Kansas. The EPA intends to further review its air quality modeling results and recent measured ozone levels, and we intend to address these states' good

[76] *EME Homer City II,* 795 F.3d at 136.

[77] *See https://www.epa.gov/air-trends/air-quality-design-values* for design value reports. At the time of this action, the most recent reports of certified design values available are for the calendar year 2021. The 2022 values are considered ''preliminary'' and therefore subject to change before certification.

neighbor obligations as expeditiously as practicable in a future action.

2. Methodology for Projecting Future Year Ozone Design Values

Consistent with the EPA's modeling guidance, the 2016 base year and future year air quality modeling results were used in a relative sense to project design values for 2023.[78] That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values up or down depending on the relative (percent) change in model predictions for each location. The EPA's modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under average conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this final action is 2016, measured data for 2014–2018 (*i.e.,* design values for 2016, 2017, and 2018) were used to project average and maximum design values in 2023.

The ozone predictions from the 2016 and future year air quality model simulations were used to project 2016–2018 average and maximum ozone design values to 2023 using an approach similar to the approach in the EPA's guidance for attainment demonstration modeling. This guidance recommends using model predictions from the 3 x 3 array of grid cells surrounding the location of the monitoring site to calculate a Relative Response Factor (RRF) for that site. However, the guidance also notes that an alternative array of grid cells may be used in certain situations where local topographic or geographical feature (*e.g.,* a large water body or a significant elevation change) may influence model response.

The 2016–2018 base period average and maximum design values were multiplied by the RRF to project each of these design values to 2023. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted future year concentrations. Following the approach in the CSAPR Update and the Revised CSAPR Update, the EPA also projected future year design values based on a modified version of the ''3 x 3'' approach for those monitoring sites located in coastal areas. In this alternative approach, the EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF). Specifically, in the WRF meteorological model those grid cells that are greater than 50% overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow, when vertical mixing of land-based emissions may be too limited due to the presence of overwater meteorology. Thus, for our modeling the EPA projected average and maximum design values at individual monitoring sites based on both the ''3 x 3'' approach as well as the alternative approach that eliminates overwater cells in the RRF calculation for near-coastal areas (*i.e.,* ''no water'' approach). The projected 2023 design values using both the ''3 x 3'' and ''no-water'' approaches are provided in the docket for this final action. Both approaches result in the same set of receptors in 2023. That is, monitoring sites that are identified as receptors in 2023 based on the ''3 x 3'' approach are also receptors based on the ''no water'' approach.

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are evaluated after truncation to integers in units of ppb. Therefore, projected design values that are greater than or equal to 71 ppb are considered to be violating the 2015 ozone NAAQS. For those sites that are projected to be violating the NAAQS based on the average design values in 2023, the Agency examined the measured design values for 2021, which are the most recent official measured design values at the time of this final action.

As noted earlier, the Agency proposes to identify nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current measured air quality through 2021 and have projected average design values of 71 ppb or greater. Maintenance-only receptors include both: (1) Those sites with projected average design values above the NAAQS that are currently measuring clean data (*i.e.,* ozone design values below the level of the 2015 ozone NAAQS in 2021) and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 71 ppb or greater. In addition to the maintenance-only receptors, ozone nonattainment receptors are also maintenance receptors because the projected maximum design values for each of these sites is always greater than or equal to the average design value. Further, as explained previously in this section, the EPA identifies certain monitoring sites as ''violating monitor'' maintenance-only receptors based on 2021 and 2022 measured ozone levels.

The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2023 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of the 2015 ozone NAAQS as part of this final action.

3. 2023 Nonattainment and Maintenance-Only Receptors for the Final Action

In this section we provide information on modeling-based design values and measured data for monitoring sites identified as nonattainment or maintenance-only receptors in 2023 for this final action. Table III.B–1 of this action contains the 2016-centered base period average and maximum 8-hour ozone design values, the 2023 projected average and maximum design values and the measured 2021 design values for monitoring sites that are projected to be nonattainment receptors in 2023. Table III.B–2 of this action contains this same information for monitoring sites that are projected to be maintenance-only receptors in 2023, based on air quality modeling. Table III.B–3 of this action contains the 2023 projected average and maximum design values and 2021 design values and 4th high

[78] U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC. *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.*

MDA8 ozone concentrations and preliminary 2020 design values and 4th high MDA8 ozone concentrations for monitoring sites identified as violating monitor maintenance-only receptors. The design values for all monitoring sites in the U.S. are provided in the docket for this action. Additional details on the approach for projecting average and maximum design values are provided in the AQM TSD.

TABLE III.B–1—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2021 DESIGN VALUES (PPB) AT PROJECTED NONATTAINMENT RECEPTORS [a]

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2021
060650016	CA	Riverside	79.0	80.0	72.2	73.1	78
060651016	CA	Riverside	99.7	101	91.0	92.2	95
080350004	CO	Douglas	77.3	78	71.3	71.9	83
080590006	CO	Jefferson	77.3	78	72.8	73.5	81
080590011	CO	Jefferson	79.3	80	73.5	74.1	83
090010017	CT	Fairfield	79.3	80	71.6	72.2	79
090013007	CT	Fairfield	82.0	83	72.9	73.8	81
090019003	CT	Fairfield	82.7	83	73.3	73.6	80
481671034	TX	Galveston	75.7	77	71.5	72.8	72
482010024	TX	Harris	79.3	81	75.1	76.7	74
490110004	UT	Davis	75.7	78	72.0	74.2	78
490353006	UT	Salt Lake	76.3	78	72.6	74.2	76
490353013	UT	Salt Lake	76.5	77	73.3	73.8	76
551170006	WI	Sheboygan	80.0	81	72.7	73.6	72

[a] 2016-centered base period average design values and projected average and maximum design values are reported with 1 digit to the right of the decimal, as recommended in the EPA's modeling guidance. The 2016 maximum design values and 2021 design values are truncated to integer values consistent with ozone design value reporting convention in appendix U of 40 CFR part 50.

TABLE III.B–2—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2021 DESIGN VALUES (PPB) AT PROJECTED MAINTENANCE-ONLY RECEPTORS

Monitor ID	State	County	2016 centered average	2016 centered maximum	2023 average	2023 maximum	2021
040278011	AZ	Yuma	72.3	74	70.4	72.1	67
080690011	CO	Larimer	75.7	77	70.9	72.1	77
090099002	CT	New Haven	79.7	82	70.5	72.6	82
170310001	IL	Cook	73.0	77	68.2	71.9	71
170314201	IL	Cook	73.3	77	68.0	71.5	74
170317002	IL	Cook	74.0	77	68.5	71.3	73
350130021	NM	Dona Ana	72.7	74	70.8	72.1	80
350130022	NM	Dona Ana	71.3	74	69.7	72.4	75
350151005	NM	Eddy	69.7	74	69.7	74.1	77
350250008	NM	Lea	67.7	70	69.8	72.2	66
480391004	TX	Brazoria	74.7	77	70.4	72.5	75
481210034	TX	Denton	78.0	80	69.8	71.6	74
481410037	TX	El Paso	71.3	73	69.8	71.4	75
482010055	TX	Harris	76.0	77	70.9	71.9	77
482011034	TX	Harris	73.7	75	70.1	71.3	71
482011035	TX	Harris	71.3	75	67.8	71.3	71
530330023	WA	King	73.3	77	67.6	71.0	64
550590019	WI	Kenosha	78.0	79	70.8	71.7	74
551010020	WI	Racine	76.0	78	69.7	71.5	73

In total, in 2023 there are a total of projected 33 modeling-based receptors nationwide including 14 nonattainment receptors in 9 different counties and 19 maintenance-only receptors in 13 additional counties (Harris County, TX, has both nonattainment and maintenance-only receptors).

As shown in Table III.B–3 of this action, there are 49 monitoring sites that are identified as ''violating-monitor'' maintenance-only receptors in 2023.As noted earlier in this section, the EPA uses the approach of considering ''violating-monitor'' maintenance-only receptors as confirmatory of the proposal's identification of receptors and does not implicate additional linked states in this final action, Rather, using this approach serves to strengthen the analytical basis for our Step 2 findings by establishing that many upwind states covered in this action are also projected to contribute above 1 percent of the NAAQS to these additional ''violating monitor'' maintenance-only receptors.

TABLE III.B–3—AVERAGE AND MAXIMUM 2023 BASE CASE 8-HOUR OZONE, AND 2021 AND PRELIMINARY 2022 DESIGN VALUES (PPB) AND 4TH HIGH CONCENTRATIONS AT VIOLATING MONITORS [a]

Monitor ID	State	County	2023 average	2023 maximum	2021	2022 P	2021 4th high	2022 P 4th high
40070010	AZ	Gila	67.9	69.5	77	76	75	74
40130019	AZ	Maricopa	69.8	70.0	75	77	78	76
40131003	AZ	Maricopa	70.1	70.7	80	80	83	78
40131004	AZ	Maricopa	70.2	70.8	80	81	81	77
40131010	AZ	Maricopa	68.3	69.2	79	80	80	78
40132001	AZ	Maricopa	63.8	64.1	74	78	79	81
40132005	AZ	Maricopa	69.6	70.5	78	79	79	77
40133002	AZ	Maricopa	65.8	65.8	75	75	81	72
40134004	AZ	Maricopa	65.7	66.6	73	73	73	71
40134005	AZ	Maricopa	62.3	62.3	73	75	79	73
40134008	AZ	Maricopa	65.6	66.5	74	74	74	71
40134010	AZ	Maricopa	63.8	66.9	74	76	77	75
40137020	AZ	Maricopa	67.0	67.0	76	77	77	75
40137021	AZ	Maricopa	69.8	70.1	77	77	78	75
40137022	AZ	Maricopa	68.2	69.1	76	78	76	79
40137024	AZ	Maricopa	67.0	67.9	74	76	74	77
40139702	AZ	Maricopa	66.9	68.1	75	77	72	77
40139704	AZ	Maricopa	65.3	66.2	74	77	76	76
40139997	AZ	Maricopa	70.5	70.5	76	79	82	76
40218001	AZ	Pinal	67.8	69.0	75	76	73	77
80013001	CO	Adams	63.0	63.0	72	77	79	75
80050002	CO	Arapahoe	68.0	68.0	80	80	84	73
80310002	CO	Denver	63.6	64.8	72	74	77	71
80310026	CO	Denver	64.5	64.8	75	77	83	72
90079007	CT	Middlesex	68.7	69.0	74	73	78	73
90110124	CT	New London	65.5	67.0	73	72	75	71
170310032	IL	Cook	67.3	69.8	75	75	77	72
170311601	IL	Cook	63.8	64.5	72	73	72	71
181270024	IN	Porter	63.4	64.6	72	73	72	73
260050003	MI	Allegan	66.2	67.4	75	75	78	73
261210039	MI	Muskegon	67.5	68.4	74	79	75	82
320030043	NV	Clark	68.4	69.4	73	75	74	74
350011012	NM	Bernalillo	63.8	66.0	72	73	76	74
350130008	NM	Dona Ana	65.6	66.3	72	76	79	78
361030002	NY	Suffolk	66.2	68.0	73	74	79	74
390850003	OH	Lake	64.3	64.6	72	74	72	76
480290052	TX	Bexar	67.1	67.8	73	74	78	72
480850005	TX	Collin	65.4	66.0	75	74	81	73
481130075	TX	Dallas	65.3	66.5	71	71	73	72
481211032	TX	Denton	65.9	67.7	76	77	85	77
482010051	TX	Harris	65.3	66.3	74	73	83	72
482010416	TX	Harris	68.8	70.4	73	73	78	71
484390075	TX	Tarrant	63.8	64.7	75	76	76	77
484391002	TX	Tarrant	64.1	65.7	72	77	76	80
484392003	TX	Tarrant	65.2	65.9	72	72	74	72
484393009	TX	Tarrant	67.5	68.1	74	75	75	75
490571003	UT	Weber	69.3	70.3	71	74	77	71
550590025	WI	Kenosha	67.6	70.7	72	73	72	71
550890008	WI	Ozaukee	65.2	65.8	71	72	72	72

[a] 2022 preliminary design values are based on 2022 measured MDA8 concentrations provided by state air agencies to the EPA's Air Quality System (AQS), as of January 3, 2023.

C. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures the EPA used to quantify the impact of emissions from specific upwind states on ozone design values in 2023 for the identified downwind nonattainment and maintenance receptors. The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The benefit of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

The EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique [79] to quantify the contribution of 2023 NO_X and VOC emissions from all sources in each state to the corresponding projected ozone design values in 2023 at

[79] As part of this technique, ozone formed from reactions between biogenic VOC and NO_X with anthropogenic NO_X and VOC are assigned to the anthropogenic emissions.

air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected future base case emissions and 2016 meteorology for this time period. In the source apportionment modeling the Agency tracked (*i.e.,* tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.,* natural emissions).

In the state-by-state source apportionment model run, the EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic NO_X emissions and VOC emissions from individual state (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_X and VOC emissions domain-wide (*i.e.,* not by state);
- Boundary Concentrations—concentrations transported into the air quality modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data emissions modeling platform (EPA did not model the contributions from individual tribes);
- Canada and Mexico—anthropogenic emissions from those sources in the portions of Canada and Mexico included within the modeling domain (the EPA did not model the contributions from Canada and Mexico separately);
- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.,* not by state); and
- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms within the modeling domain.

The contribution modeling provided contributions to ozone from anthropogenic NO_X and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_X and VOC emissions were modeled and assigned to the ''biogenic'' category. The contributions from wildfire and prescribed fire NO_X and VOC emissions were modeled and assigned to the ''fires'' category. That is, the contributions from the ''biogenic'' and ''fires'' categories are not assigned to individual states nor are they included in the state contributions.

For the Step 2 analysis, the EPA calculated a contribution metric that considers the average contribution on the 10 highest ozone concentration days (*i.e.,* top 10 days) in 2023 using the same approach as the EPA used in the proposed action and in the Revised CSAPR Update.[80] This average contribution metric is intended to provide a reasonable representation of the contribution from individual states to projected future year design values, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner ensures the magnitude of the contributions is directly related to the magnitude of the ozone design value at each site.

The analytic steps for calculating the contribution metric for the 2023 analytic year are as follows:

(1) Calculate the 8-hour average contribution from each source tag to individual ozone monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and average the concentrations for the top 10 modeled ozone concentration days in 2023;

(3) Divide the average contribution by the corresponding average concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site;

(4) Multiply the 2023 average design value by the 2023 RCF at each site to produce the average contribution metric values in 2023; [81]

(5) Truncate the average contribution metric values to two digits to the right of the decimal for comparison to the 1 percent of the NAAQS screening threshold (0.70 ppb)

The resulting contributions from each tag to each monitoring site in the U.S. for 2023 can be found in the docket for this final action. Additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the AQM TSD. The EPA's response to comments on the method for calculating the contribution metric can be found in the RTC document for this final action.

The largest contribution from each state that is the subject of this final action to modeled 8-hour ozone nonattainment and modeling-based maintenance receptors in downwind states in 2023 are provided in Table III.C–1 of this action. The largest contribution from each state to the additional ''violating monitor'' maintenance-only receptors is provided in Table III.C–2 of this action. All states that are linked to one or more nonattainment or maintenance-only receptors are also linked to one or more violating monitor maintenance receptors, except for Minnesota.

TABLE III.C–1—LARGEST CONTRIBUTION BY STATE TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2023 (ppb)

Upwind state	Largest contribution to a downwind nonattainment receptor	Largest contribution to a downwind maintenance-only receptor
Alabama	0.75	0.65
Arkansas	0.94	1.21
California	35.27	6.31
Illinois	13.89	19.09
Indiana	8.90	10.03
Kentucky	0.84	0.79
Louisiana	9.51	5.62

[80] The use of daily contributions on the top 10 concentration days for calculating the average contribution metric is designed to be consistent with the method specified in the modeling guidance in terms of the number of days to use when projecting future year design values.

[81] Note that a contribution metric value was not calculated for any receptor at which there were fewer than 5 days with model-predicted MDA8 ozone concentrations greater than or equal to 60 ppb in 2023. Eliminating from the Step 2 evaluation any receptors for which the modeling does not meet this criterion ensures that upwind state contributions are based on the days with the highest ozone projections. This criterion is consistent with the criterion for projecting design values, as recommended in the EPA's modeling guidance. In the modeling for this final action, the monitoring site in Seattle, Washington (530330023), was the only receptor that did not meet this criterion.

TABLE III.C–1—LARGEST CONTRIBUTION BY STATE TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2023 (ppb)—Continued

Upwind state	Largest contribution to a downwind nonattainment receptor	Largest contribution to a downwind maintenance-only receptor
Maryland	1.13	1.28
Michigan	1.59	1.56
Minnesota	0.36	0.85
Mississippi	1.32	0.91
Missouri	1.87	1.39
Nevada	1.11	1.13
New Jersey	8.38	5.79
New York	16.10	11.29
Ohio	2.05	1.98
Oklahoma	0.79	1.01
Texas	1.03	4.74
Utah	1.29	0.98
West Virginia	1.37	1.49
Wisconsin	0.21	2.86

TABLE III.C–2—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE "VIOLATING MONITOR" MAINTENANCE-ONLY RECEPTORS (ppb)

Upwind State	Largest contribution to a downwind violating monitor maintenance-only receptor
Alabama	0.79
Arkansas	1.16
California	6.97
Illinois	16.53
Indiana	9.39
Kentucky	1.57
Louisiana	5.06
Maryland	1.14
Michigan	3.47
Minnesota	0.64
Mississippi	1.02
Missouri	2.95
Nevada	1.11
New Jersey	8.00
New York	12.08
Ohio	2.25
Oklahoma	1.57
Texas	3.83
Utah	1.46
West Virginia	1.79
Wisconsin	5.10

IV. Summary of Bases for Disapproval

As explained in Section II, the EPA relies on the 4-step interstate transport framework to evaluate obligations under CAA section 110(a)(2)(D)(i)(I). At proposal, the EPA used this framework to guide its evaluation of each state's SIP submission. While the EPA used this framework to maintain a nationally consistent and equitable approach to interstate transport, the contents of each individual state's submission were evaluated on their own merits, and the EPA considered the facts and information, including information from the Agency, available to the state at the time of its submission, in addition to more recent air quality and contribution information. Here we provide a brief, high level overview of the SIP submissions and the EPA's evaluation and key bases for disapproval. These summaries are presented for ease of reference and to direct the public to the most relevant portions of the proposals and final rule record for further information. The full basis for the EPA's disapprovals is available in relevant **Federal Register** notifications of proposed disapproval for each state, in the technical support documents informing the proposed and final action, and in the responses to comments in Section V and the RTC document. In general, except as otherwise noted, the comments and updated air quality information did not convince the Agency that a change from proposal was warranted for any state. The exceptions are that the EPA is deferring action at this time on the proposed disapprovals for Tennessee and Wyoming. Further, the EPA is finalizing partial approvals of prong 1 ("significant contribution to nonattainment") for Minnesota and Wisconsin because they are linked only to maintenance-only receptors; the EPA is finalizing a partial disapproval with respect to prong 2 ("interference with maintenance") obligations for these two states.

A. Alabama

In the 2016v3 modeling, Alabama is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor. It is also linked to one violating-monitor maintenance-only receptor. Its highest-level contribution is 0.75 ppb to Galveston County, Texas (AQS Site ID 481671034).[82] A full summary of Alabama's June 21, 2022, SIP submission, as well as Alabama's previous submission history, was provided in the proposed SIP submission disapproval.[83] In its submission, Alabama advocated for discounting maintenance receptors through use of historical data trends. The EPA finds Alabama's approach is not adequately justified.[84] The EPA disagrees with Alabama's assessment of the 2016v2 modeling,[85] and further responds to comments on model performance in Section III. The EPA disagrees with Alabama's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2,[86] and further addresses the relevance of "significant impact levels" within the Prevention of Significant Deterioration program ("PSD SILs") in Section V.B.6. The EPA found technical flaws in Alabama's back trajectory analysis.[87] The State did not conduct an adequate Step 3 analysis, and the EPA identified several unsupported assertions in the SIP submission.[88] Alabama also argued in its SIP submission that it had already implemented all cost-effective controls. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[89] The EPA further addresses arguments related to

[82] The highest-magnitude downwind contribution from each state is based on the contributions to modeling-based receptors and does not consider the contributions to violating-monitor maintenance-only receptors. Each state's maximum contribution to downwind violating-monitor maintenance-only receptors is available in the Final Action AQM TSD.

[83] 87 FR 64419–64421.

[84] Id. at 64421–64422.

[85] Id. at 64422–64423.

[86] Id. at 64423–64424.

[87] Id. at 64424–64425.

[88] Id. at 64425–64426.

[89] Id.

mobile sources in Section V.C.1.[90] Additionally, as explained in Section V.B.9,[91] reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3. The State included no permanent and enforceable emissions controls in its SIP submission.[92] We provide further response to comments regarding Alabama's SIP submission in the RTC document. The EPA is finalizing disapproval of Alabama's interstate transport SIP submission for the 2015 ozone NAAQS.

B. Arkansas

In the 2016v3 modeling, Arkansas is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and five maintenance-only receptors. It is also linked to seven violating-monitor maintenance-only receptor. Its highest-level contribution is 1.21 ppb to Brazoria County Texas (AQS Site ID 480391004). A full summary of Arkansas's October 10, 2019, SIP submission was provided in the proposed SIP submission disapproval.[93] The EPA disagrees with Arkansas's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2, and further addresses the relevance of PSD SILs in Section V.B.6.[94] The EPA also found technical flaws in Arkansas's ''consistent and persistent'' claims and back trajectory analysis,[95] and legal flaws in the state's arguments related to relative contribution.[96] The State did not conduct an adequate Step 3 analysis.[97] Arkansas argued in its SIP submission that it had already implemented all cost-effective controls. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[98] Further, the State's reliance on the cost-effectiveness thresholds in the CSAPR and CSAPR Update is insufficient for the more protective 2015 ozone NAAQS.[99] The State included no permanent and enforceable controls in its SIP submission.[100] We provide further response to comments regarding Arkansas's SIP submission in the RTC document. The EPA is finalizing disapproval of Arkansas's interstate transport SIP submission for the 2015 ozone NAAQS.

C. California

In the 2016v3 modeling, California is projected to be linked above 1 percent of the NAAQS to eight nonattainment receptors and four maintenance-only receptors. It is also linked to 26 violating-monitor maintenance-only receptor. Its highest-level contribution is 35.27 ppb to the nonattainment receptor located on the Morongo Band of Missions Indians reservation (AQS Site ID 060651016).[101] A full summary of California's October 1, 2018, SIP submission was provided in the proposed SIP submission disapproval.[102] The EPA found technical and legal flaws in California's geographic, meteorological, wildfire, and trajectories analysis, and the State's arguments related to local, international, and non-anthropogenic emissions.[103] The EPA further addresses the topic of international emissions in Section V.C.2. The State did not conduct an adequate Step 3 analysis.[104] California in its SIP submission argued that it had already implemented all cost-effective controls. However, California provided an insufficient evaluation of additional control opportunities to support such a conclusion.[105] Further, the State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for the more protective 2015 ozone NAAQS.[106] California included no permanent and enforceable emissions controls in its SIP submission[107] and argued that interstate transport is fundamentally different in the western U.S. than in the eastern U.S., to which the EPA responds in Section V.C.3.[108] We provide further response to comments regarding California's SIP submission in the RTC document. The EPA is finalizing disapproval of California's interstate transport SIP submission for the 2015 ozone NAAQS.

D. Illinois

In the 2016v3 modeling, Illinois is projected to be linked above 1 percent of the NAAQS to two nonattainment receptors and three maintenance-only receptors. It is also linked to six violating-monitor maintenance-only receptor. Its highest-level contribution is 19.09 ppb to Kenosha County, Wisconsin (AQS Site ID 550590019). A full summary of Illinois's May 21, 2019, SIP submission was provided in the proposed SIP submission disapproval.[109] The EPA disagrees with Illinois's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2.[110] The state did not conduct an adequate Step 3 analysis.[111] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[112] The EPA also found technical and legal flaws in Illinois' arguments related to ''on-the-way'' controls, participation in the Lake Michigan Air Directors Consortium (LADCO), and international contributions.[113] The EPA further addresses the topic of international contribution in Section V.C.2. Further, as explained in Section V.B.9., states may not rely on non-SIP measures to meet SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[114] The State included no permanent and enforceable controls in its SIP submission.[115] We provide further response to comments regarding Illinois's SIP submission in the RTC document. The EPA is finalizing disapproval of Illinois's interstate

[90] *See also* id. at 64425–64426.
[91] *See also* id. at 64426.
[92] Id.
[93] 87 FR 9798, 9803–9806 (February 22, 2022).
[94] Id. at 9806–9807.
[95] Id. at 9808–9809.
[96] Id. at 9809–9810.
[97] Id. at 9809–9810.
[98] Id. at 9810.
[99] Id.
[100] Id. at 9811.

[101] We note that, consistent with the EPA's prior good neighbor actions in California, the regulatory ozone monitor located on the Morongo Band of Mission Indians (''Morongo'') reservation is a projected downwind receptor in 2023. *See* monitoring site 060651016 in Table V.D–1. of this action. We also note that the Temecula, California, regulatory ozone monitor is a projected downwind receptor in 2023 and in past regulatory actions has been deemed representative of air quality on the Pechanga Band of Luiseño Indians (''Pechanga'') reservation. *See, e.g.,* Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians, 80 FR 18120, at 18121–18123 (April 3, 2015); *see* also monitoring site 060650016 in Table V.D–1. of this action. The presence of receptors on, or representative of, the Morongo and Pechanga reservations does not trigger obligations for the Morongo and Pechanga Tribes. Nevertheless, these receptors are relevant to the EPA's assessment of any linked upwind states' good neighbor obligations. *See, e.g.,* Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide, 83 FR 65093 (December 19, 2018). Under 40 CFR 49.4(a), tribes are not subject to the specific plan submittal and implementation deadlines for NAAQS-related requirements, including deadlines for submittal of plans addressing transport impacts. We also note that California's maximum contribution to a downwind state receptor is 6.31 ppb in Yuma County, Arizona (AQS Site ID 040278011).
[102] 87 FR 31448–31452.
[103] Id. at 31454–31457, 31460.
[104] Id. at 31458–31461.
[105] Id. at 31458.
[106] Id. at 31458–31459.
[107] Id. at 31461.
[108] *See also* id. at 31453.
[109] Id. at 9845.
[110] Id. at 9852–9853.
[111] Id. at 9853–9855.
[112] Id. at 9853.
[113] Id. at 9853–9854.
[114] *See also* id. at 9854.
[115] Id. at 9855.

transport SIP submission for the 2015 ozone NAAQS.

E. Indiana

In the 2016v3 modeling, Indiana is projected to be linked above 1 percent of the NAAQS to four nonattainment receptors and six maintenance-only receptors. It is also linked to 10 violating-monitor maintenance receptors. Its highest-level contribution is 10.03 ppb to Racine County, Wisconsin (AQS Site ID 551010020). A full summary of Indiana's November 2, 2018, SIP submission was provided in the proposed SIP submission disapproval.[116] The EPA disagrees with Indiana's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2.[117] The State did not conduct an adequate Step 3 analysis.[118] The EPA found technical and legal flaws in Indiana's arguments related to ozone concentration and design value trends, the timing of expected source shutdowns, local emissions, international and offshore contributions, Indiana's portion of contribution, and Indiana's back trajectory analysis.[119] The EPA further addresses the topic of international emissions in Section V.C.2. Indiana argued that it would not be cost-effective to implement controls on non-EGUs. However, the State included an insufficient evaluation of additional emissions control opportunities, for any type of source, to support that conclusion.[120] The EPA also confirmed that EGU shutdowns identified by Indiana were included in the 2016v2 modeling,[121] and if they were valid and not included in the 2016v2 modeling, then they were incorporated into the 2016v3 modeling as explained in Section III and the 2016v3 Emissions Modeling TSD. Further, in Section V.B.9., states may not rely on non-SIP measures to meet SIP requirements.[122] The State included no permanent and enforceable emissions controls in its SIP submission.[123] We provide further response to comments regarding Indiana's SIP submission in the RTC document. The EPA is finalizing disapproval of Indiana's interstate transport SIP submission for the 2015 ozone NAAQS.

F. Kentucky

In the 2016v3 modeling, Kentucky is projected to be linked above 1 percent of the NAAQS to two nonattainment receptors and one maintenance-only receptor. It is also linked to four violating-monitor maintenance-only receptor. Its highest-level contribution based on the 2016v3 modeling is 0.84 ppb to Fairfield County, Connecticut (AQS Site ID 090019003). A full summary of Kentucky's January 11, 2019, SIP submission was provided in the proposed SIP submission disapproval.[124] Although the EPA's 2016v3 modeling indicated a highest-level contribution below 1 ppb, the EPA disagrees with Kentucky's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2.[125] Further, Kentucky is linked above 1 ppb to a violating-monitor receptor. The EPA addresses the relevance of the PSD SILs in Section V.B.6. The Commonwealth did not conduct an adequate Step 3 analysis.[126] The EPA found technical and legal flaws in Kentucky's arguments related to the level and timing of upwind versus downwind-state responsibilities, NO_X emissions trends and other air quality information, and back-trajectory analyses.[127] The EPA also found technical and legal flaws in certain State-level comments submitted by Midwest Ozone Group and attached to Kentucky's submission, including arguments related to international emissions.[128] The EPA further addresses the topics of international emissions in Section V.C.2. Kentucky in its SIP submission also argued that it had already implemented all cost-effective controls. However, the Commonwealth included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[129] As explained in Section V.B.9., states may not rely on non-SIP measures to meet SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[130] The EPA also confirmed in the proposed SIP submission disapproval that EGU shutdowns identified by Kentucky were included in the 2016v2 modeling, and yet Kentucky was still linked in that modeling.[131] Kentucky in its SIP submission advocated for lower interstate ozone transport responsibility for states linked only to maintenance-only receptors. The EPA finds Kentucky's arguments in this regard inadequately supported.[132] The Commonwealth included no permanent and enforceable emissions controls in its SIP submission.[133] We provide further response to comments regarding Kentucky's SIP submission in the RTC document. The EPA is finalizing disapproval of Kentucky's interstate transport SIP submission for the 2015 ozone NAAQS.

G. Louisiana

In the 2016v3 modeling, Louisiana is projected to be linked above 1 percent of the NAAQS to two nonattainment receptors and five maintenance-only receptors. It is also linked to 10 violating-monitor maintenance-only receptor. Its highest-level contribution is 9.51 ppb to Galveston County Texas (AQS Site ID 481671034). A full summary of Louisiana's November 13, 2019, SIP submission was provided in the proposed SIP submission disapproval.[134] The EPA disagrees with Louisiana's arguments for application of a higher contribution threshold than 1 percent of the NAAQS and disagrees with Louisiana's criticisms of a 1 percent of the NAAQS contribution threshold at Step 2.[135] The EPA further addresses technical comments on the 1 percent of the NAAQS contribution threshold in Section V.B.4. Louisiana did not conduct an adequate Step 3 analysis.[136] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[137] The EPA also found technical flaws in Louisiana's ''consistent and persistent'' claims, assessment of seasonal weather patterns, surface wind directions, and back trajectory analysis.[138] The State included no permanent and enforceable controls in its SIP submission.[139] We provide further response to comments regarding Louisiana's SIP submission in the RTC document. The EPA is finalizing disapproval of Louisiana's interstate transport SIP submission for the 2015 ozone NAAQS.

[116] Id. at 9845–9847.
[117] Id. at 9855–9856.
[118] Id. at 9857–9861.
[119] Id. at 9858–9861.
[120] Id. at 9857–9858.
[121] Id. at 9858–9859.
[122] *See also* id. at 9861.
[123] Id.
[124] 87 FR 9498, 9503–9507 (February 22, 2022).
[125] Id. at 9509–9510.
[126] Id. at 9511–9515.
[127] Id. at 9512–9514.
[128] Id. at 9508, 9515. The state also did not explain its own views regarding the relevance of these materials to its submission. Id.
[129] Id. at 9511–9512.
[130] See also id. at. 9512.
[131] Id. at 9511–9512.
[132] Id. at 9514–9515.
[133] Id. at 9515.
[134] Id. at 9811–9812.
[135] Id. at 9812, 9815–9816.
[136] Id. at 9814–9816.
[137] Id. at 9814. 9816.
[138] Id. at 9814–9816.
[139] Id. at 9816.

H. Maryland

In the 2016v3 modeling, Maryland is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to three violating-monitor maintenance receptors. Its highest-level contribution is 1.28 ppb to New Haven County, Connecticut (AQS Site ID 090099002). A full summary of Maryland's October 16, 2019, SIP submission was provided in the proposed SIP submission disapproval.[140] The state did not conduct an adequate Step 3 analysis.[141] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[142] Further, as explained in Section V.B.9, states may not rely on non-SIP measures to meet SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[143] The EPA also confirmed in the proposed SIP submission disapproval that state emissions controls and regulations identified by Maryland were generally included in the 2016v2 modeling, and yet Maryland was still linked in that modeling.[144] The State included no permanent and enforceable controls in its SIP submission.[145] We provide further response to comments regarding Maryland's SIP submission in the RTC document. The EPA is finalizing disapproval of Maryland's interstate transport SIP submission for the 2015 ozone NAAQS.

I. Michigan

In the 2016v3 modeling, Michigan is projected to be linked above 1 percent of the NAAQS to four nonattainment receptors and six maintenance-only receptors. It is also linked to eight violating-monitor maintenance receptors. Its highest-level contribution is 1.59 to Sheboygan County, Wisconsin (AQS Site ID 551170006). A full summary of Michigan's March 5, 2019, SIP submission was provided in the proposed SIP submission disapproval.[146] The EPA disagrees with Michigan's arguments for application of a higher contribution threshold than 1 percent of the NAAQS as well as criticisms of a 1 percent of the NAAQS contribution threshold at Step 2.[147] The EPA further addresses technical comments on the 1 percent of the NAAQS contribution threshold in Section V.B.4 and addresses comments regarding the relevance of the PSD SILs in Section V.B.6. The State did not conduct an adequate Step 3 analysis.[148] Michigan argued in its SIP submission that additional controls would be premature and burdensome. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[149] The EPA found technical and legal flaws in Michigan's arguments related to upwind-state obligations as to maintenance-only receptors, international emissions, relative contribution, apportionment, and upwind versus downwind-state responsibilities.[150] The EPA further addresses the topics of mobile sources and international emissions in Sections V.C.1 and V.C.2, respectively. The EPA also confirmed in the proposed SIP submission disapproval that the EGU retirements identified by Michigan as not included in the 2011-based EPA modeling, as well as various Federal rules, were included in the 2016v2 modeling, and yet Michigan was still linked in that modeling.[151] The State included no permanent and enforceable emissions controls in its SIP submission.[152] We provide further response to comments regarding Michigan's SIP submission in the RTC document. The EPA is finalizing disapproval of Michigan's interstate transport SIP submission for the 2015 ozone NAAQS.

J. Minnesota

In the 2016v3 modeling, Minnesota is projected to be linked above 1 percent of the NAAQS to one maintenance-only receptor. It is not linked to a violating-monitor maintenance-only receptor. Its highest-level contribution is 0.85 ppb to Cook County, Illinois (AQS Site ID 170310001). A full summary of Minnesota's October 1, 2018, SIP submission was provided in the proposed SIP submission disapproval.[153] Because Minnesota was not projected to be linked to any receptor in 2023 in the EPA's 2011-based modeling, comments argued that the EPA must approve the SIP submission and not rely on new modeling. The EPA responds to these comments in Section V.A.4. Although the EPA acknowledges that Minnesota's Step 3 analysis was insufficient in part because the State assumed it was not linked at Step 2, this is ultimately inadequate to support a conclusion that the State's sources do not interfere with maintenance of the 2015 ozone NAAQS in other states in light of more recent air quality analysis.[154] The State included no permanent and enforceable emissions controls in its SIP submission.[155] We provide further response to comments regarding Minnesota's SIP submission in the RTC document. Although EPA proposed to disapprove both prong 1 and prong 2 of Minnesota's SIP submission, the present record, including the results of the 2016v3 modeling, indicates that Minnesota is not linked to any nonattainment receptors.[156] The EPA is finalizing a partial approval of Minnesota's interstate transport SIP submission for the 2015 ozone NAAQS as to prong 1 and a partial disapproval as to prong 2.

K. Mississippi

In the 2016v3 modeling, Mississippi is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and two maintenance-only receptors. It is also linked to eight violating-monitor maintenance receptors. Its highest-level contribution is 1.32 ppb to Galveston County, Texas (AQS Site ID 481671034). A full summary of Mississippi's September 3, 2019, SIP submission was provided in the proposed SIP submission disapproval.[157] In its submission, Mississippi advocated for discounting receptors through use of historical data trends. The EPA finds Mississippi's approach is not adequately justified.[158] In the 2011-based modeling, Mississippi's contribution to receptors was above 1 percent of the NAAQS, but below 1 ppb. The EPA disagrees with Mississippi's arguments for application of a higher contribution threshold than

[140] Id. at 9469.

[141] Id. at 9470–9473.

[142] Id. at 9471, 9473.

[143] *See also* id. at 9471, 9473 n.46, 9474.

[144] Id. at 9472–9473.

[145] Id. at 9473–9474.

[146] Id. at 9847–9848.

[147] Id. at 9861–9862.

[148] Id. at 9863–9867.

[149] Id. at 9864.

[150] Id. at 9864–9867.

[151] Id. at 9866.

[152] Id. at 9867.

[153] Id. at 9867.

[154] Id. at 9868–9869.

[155] Id. at 9869.

[156] The EPA received a comment that it would be arbitrary and capricious for the EPA to finalize a full disapproval of Tennessee's good neighbor SIP submission (both prong 1 and prong 2) if EPA concluded the state is linked only to a maintenance-only receptor (prong 2). EPA is deferring final action on Tennessee's good neighbor SIP submission, but in reviewing linkages in the 2016v3 modeling we determined that Minnesota and Wisconsin are not linked above 1 percent of the NAAQS to any nonattainment receptors (prong 1) but are linked to maintenance-only receptors (prong 2); these states are receiving partial approvals and partial disapprovals.

[157] 87 FR 9554.

[158] Id. at 9556.

1 percent of the NAAQS at Step 2,[159] and further addresses the relevance of the PSD SILs in Section V.B.6. The state did not conduct a Step 3 analysis.[160] The State included no evaluation of additional emissions control opportunities in its SIP submission.[161] The State included no permanent and enforceable emissions controls in its SIP submission.[162] We provide further response to comments regarding Mississippi's SIP submission in the RTC document. The EPA is finalizing disapproval of Mississippi's interstate transport SIP submission for the 2015 ozone NAAQS.

L. Missouri

In the 2016v3 modeling, Missouri is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and three maintenance-only receptors. It is also linked to five violating-monitor maintenance receptors. Its highest-level contribution is 1.87 ppb to Sheboygan County, Wisconsin (AQS Site ID 551170006). A full summary of Missouri's June 10, 2019, SIP submission was provided in the proposed SIP submission disapproval.[163] In its submission, Missouri advocated for discounting certain maintenance receptors through use of historical data trends. The EPA finds Missouri's approach is not adequately justified.[164] The EPA disagrees with Missouri's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2, and further addresses comments regarding the August 2018 memorandum in Section V.B.7.[165] The State did not conduct a Step 3 analysis.[166] The State included no evaluation of additional emissions control opportunities in its SIP submission.[167] The State included no permanent and enforceable emissions controls in its SIP submission.[168] We provide further response to comments regarding Missouri's SIP submission in the RTC document. The EPA is finalizing disapproval of Missouri's June 10, 2019, interstate transport SIP submission for the 2015 ozone NAAQS.

M. Nevada

In the 2016v3 modeling, Nevada is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to one violating-monitor maintenance receptor. Its highest-level contribution is 1.13 ppb to Weber County, Utah (AQS Site ID 490570002). A full summary of Nevada's October 1, 2018, SIP submission was provided in the proposed SIP submission disapproval.[169] Because Nevada was not projected to be linked to any receptor in 2023 in the EPA's 2011-based modeling, commenters on the proposed SIP submission disapproval argued that the EPA must approve the SIP submission and not rely on new modeling. The EPA responds to these comments in Section V.A.4. The EPA also responds to technical criticisms of the 1 percent of the NAAQS contribution threshold and the relevance of the PSD SILs in Section V.B.4 and in Section V.B.6, respectively. The State did not conduct a Step 3 analysis.[170] The State included no evaluation of additional emissions control opportunities in its SIP submission.[171] The State included no additional emissions controls in its SIP submission.[172] We provide response to comments specific to interstate transport policy in the western U.S. in Section V.C.3. We provide further response to comments regarding Nevada's SIP submission in the RTC document. The EPA is finalizing disapproval of Nevada's interstate transport SIP submission for the 2015 ozone NAAQS.

N. New Jersey

In the 2016v3 modeling, New Jersey is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to three violating-monitor maintenance receptors. Its highest-level contribution is 8.38 ppb to Fairfield County, Connecticut (AQS Site ID 090019003). A full summary of New Jersey's May 13, 2019, SIP submission was provided in the proposed SIP submission disapproval.[173] The State did not conduct an adequate Step 3 analysis.[174] New Jersey argued in its SIP submission that existing controls were sufficient to address the State's good neighbor obligations. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[175] The State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for a more protective NAAQS.[176] The State included no permanent and enforceable emissions controls in its SIP submission.[177] We provide further response to comments regarding New Jersey's SIP submission in the RTC document. The EPA is finalizing disapproval of New Jersey's interstate transport SIP submission for the 2015 ozone NAAQS.

O. New York

In the 2016v3 modeling, New York is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to two violating-monitor maintenance receptors. Its highest-level contribution is 16.10 ppb to Fairfield County, Connecticut (AQS Site ID 090010017). A full summary of New York's September 25, 2018, SIP submission was provided in the proposed SIP submission disapproval.[178] The state did not conduct an adequate Step 3 analysis.[179] New York argued in its SIP submission that existing controls were sufficient to address the State's good neighbor obligations. However, the state included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[180] The State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for the more protective 2015 ozone NAAQS.[181] The State included no permanent and enforceable emissions controls in its SIP submission.[182] We provide further response to comments regarding New York's SIP submission in the RTC document. The EPA is finalizing disapproval of New York's interstate transport SIP submission for the 2015 ozone NAAQS.

P. Ohio

In the 2016v3 modeling, Ohio is projected to be linked above 1 percent of the NAAQS to four nonattainment receptors and five maintenance-only

[159] Id. at 9557.
[160] Id. at 9558.
[161] Id.
[162] Id.
[163] Id. at 9538–9540.
[164] Id. at 9540–9541.
[165] *See also* id. at 9541–9544.
[166] Id. at 9544.
[167] Id.
[168] We note that in comments, Missouri indicated its intent to submit a new SIP submission to the EPA, which would re-evaluate good neighbor obligations based on its 2016v2 linkages and provide an analysis that would include emissions reductions requirements. The EPA received this submission on November 1, 2022. The EPA explains its consideration of this new submission as separate SIP submission in the RTC document for this final action.
[169] 87 FR 31485, 31492–31493 (May 24, 2022).
[170] Id. at 31493.
[171] Id.
[172] Id.
[173] Id. at 9490–9491.
[174] Id. at 9496.
[175] Id.
[176] Id.
[177] Id. at 9496–9497.
[178] Id. at 9489–9490.
[179] Id. at 9492–9494.
[180] Id. at 9493.
[181] Id. at 9493–9494.
[182] Id. at 9494–9495.

receptors. It is also linked to nine violating-monitor maintenance receptors. Its highest-level contribution is 2.05 ppb to Fairfield County, Connecticut (AQS Site ID 090019003). A full summary of Ohio's September 28, 2018, SIP submission was provided in the proposed SIP submission disapproval.[183] In its submission, Ohio advocated for use of the Texas Commission on Environmental Quality (TCEQ)'s definition of maintenance receptors. The EPA finds that TCEQ's definition is legally and technically flawed,[184] and as a result Ohio's approach is also not adequately justified.[185] The EPA further evaluates TCEQ's technical arguments in a TSD prepared by regional modeling staff.[186] The EPA disagrees with Ohio's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2.[187] The EPA responds to technical criticisms of the 1 percent of the NAAQS contribution threshold in Section V.B.4. The State did not conduct an adequate Step 3 analysis.[188] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[189] The EPA found technical deficiencies in Ohio's unsubstantiated claims that emissions are overestimated.[190] The EPA also confirmed in the proposed SIP submission disapproval that several EGU and non-EGUs identified by Ohio were included in the 2016v2 modeling, and yet Ohio was still linked in that modeling.[191] The EPA summarizes the emissions inventories used in the 2016v3 modeling in Section III.A. Further, as explained in Section V.B.9, states may not rely on non-SIP measures to meet SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[192] The EPA finds legal flaws and deficiencies in Ohio's arguments related to upwind versus downwind-state responsibilities, the role of international emissions, relative contribution, and overcontrol.[193] The EPA discusses international emissions in Section V.C.2. The EPA disagrees with Ohio's arguments related to mobile sources.[194] We further address this topic in Section V.C.1. Ohio also argued in its SIP submission that it had already implemented all cost-effective controls. However, the state included no evaluation of additional emissions control opportunities to support such a claim.[195] Further, the State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for the more protective 2015 ozone NAAQS.[196] The State included no permanent and enforceable emissions controls in its SIP submission.[197] We provide further response to comments regarding Ohio's SIP submission in the RTC document. The EPA is finalizing disapproval of Ohio's interstate transport SIP submission for the 2015 ozone NAAQS.

Q. Oklahoma

In the 2016v3 modeling, Oklahoma is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and one maintenance-only receptor. It is also linked to eight violating-monitor maintenance receptors. Its highest-level contribution is 1.01 ppb to Denton County, Texas (AQS Site ID 481210034). A full summary of Oklahoma's October 25, 2018, SIP submission was provided in the proposed SIP submission disapproval.[198] In its submission, Oklahoma advocated for use of TCEQ's definition of maintenance receptors and modeling to discount receptors in Texas. The EPA finds that TCEQ's definition is legally and technically flawed [199] and, as a result, Oklahoma's approach is also not adequately justified.[200] The EPA further evaluates TCEQ's technical arguments in the EPA Region 6 2015 8-Hour Ozone Transport SIP Proposal TSD (Evaluation of TCEQ Modeling TSD) prepared by regional modeling staff.[201] Comments argued against the use of updated modeling where linkages in the EPA's 2011-based modeling and later iterations of EPA modeling differ. The EPA addressed the change in identified linkages between the 2011-based modeling and the 2016v2 modeling in the proposed SIP disapproval,[202] and further responds to comments on the use of updated modeling in Section V.A.4. The EPA disagrees with Oklahoma's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2 [203] and further addresses comments regarding the relevance of the PSD SILs in Section V.B.6. The State did not conduct an adequate Step 3 analysis.[204] Oklahoma argued in its SIP submission that it had already implemented all cost-effective controls. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[205] As explained in Section V.B.9, states may not rely on non-SIP measures to meet SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[206] Further, the State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for the more protective 2015 ozone NAAQS.[207] The EPA finds legal flaws in Oklahoma's argument related to collective contribution.[208] The State included no permanent and enforceable emissions controls in its SIP submission.[209] We provide further response to comments regarding Oklahoma's SIP submission in the RTC document. The EPA is finalizing disapproval of Oklahoma's interstate transport SIP submission for the 2015 ozone NAAQS.

R. Texas

In the 2016v3 modeling, Texas is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and nine maintenance-only receptors. It is also linked to ten violating-monitor maintenance-only receptor. Its highest-level contribution is 4.74 ppb to Dona Ana County, New Mexico (AQS Site ID 350130021). A full summary of Texas's August 17, 2018, SIP submission was provided in the proposed SIP submission disapproval,[210] and additional details were provided in the Evaluation of TCEQ Modeling TSD. The EPA identified several technical flaws in TCEQ's modeling and analysis of modeling results.[211] In its submission, Texas advocated for use of its own definition of maintenance receptors and modeling. The EPA finds Texas's approach inadequately justified and

[183] Id. at 9849–9851.
[184] Id. at 9826–9829.
[185] Id. at 9869–9870.
[186] 2015 8-Hour Ozone Transport SIP Proposal TSD, in Docket ID No. EPA–R06–OAR–2021–0801 (hereinafter Evaluation of TCEQ Modeling TSD).
[187] Id. at 9871.
[188] Id. at 9871–9875.
[189] Id. at 9871–9875.
[190] Id. at 9872.
[191] Id.
[192] *See also* id. at 9874–9875.
[193] Id. at 9873–9874.
[194] Id.
[195] Id. at 9872–9873.
[196] Id. at 9874.
[197] Id. at 9875.
[198] Id. at 9816–9818.
[199] Id. at 9826–9829.
[200] Id. at 9820–9822.
[201] Evaluation of TCEQ Modeling TSD in Docket ID No. EPA–R06–OAR–2021–0801.
[202] 87 FR 9823.
[203] Id. at 9819.
[204] Id. at 9822–9824.
[205] Id. at 9822–9824.
[206] *See also* id. at. 9822–9823.
[207] Id.
[208] Id. at 9823.
[209] Id. at 9824.
[210] Id. at 9824–9826.
[211] Id. at 9829–9830; Evaluation of TCEQ Modeling TSD.

legally and technically flawed.[212] The EPA further evaluated TCEQ's technical arguments in the Evaluation of TCEQ Modeling TSD. In comment on the proposal, Texas pointed to differences in linkages in the EPA's 2011-based modeling and 2016v2 modeling. The EPA addressed the change in identified linkages between the 2011-based modeling and the 2016v2 modeling in the proposed SIP submission disapproval,[213] and further responds to comments on the use of updated modeling in Section V.A.4. The State did not conduct an adequate Step 3 analysis.[214] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[215] The EPA found technical flaws in Texas's arguments related to ''consistent and persistent'' claims and its other assessments, including analysis of back trajectories.[216] The State included no permanent and enforceable emissions controls in its SIP submission.[217] We provide further response to comments regarding Texas's SIP submission in the RTC document. The EPA is finalizing disapproval of Texas's interstate transport SIP submission for the 2015 ozone NAAQS.

S. Utah

In the 2016v3 modeling, Utah is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to four violating-monitor maintenance receptors. Its highest-level contribution is 1.29 ppb to Douglas County, Colorado (AQS Site ID 080350004). A full summary of Utah's January 29, 2020, SIP submission was provided in the proposed SIP submission disapproval.[218] In its submission, Utah argued that certain receptors in Colorado should not be counted as receptors for the purpose of 2015 ozone NAAQS interstate transport, but Utah's explanation is insufficient to discount those receptors.[219] The EPA disagrees with Utah's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2.[220] Utah suggested in its SIP submission that interstate transport is fundamentally different in the western U.S. than in the eastern U.S., an argument we have previously rejected and respond to further in Section V.C.3.[221] The State did not conduct an adequate Step 3 analysis.[222] The State included an insufficient evaluation of additional emissions control opportunities in its SIP submission.[223] The EPA finds technical and legal flaws in the State's arguments related to relative contribution, international and non-anthropogenic emissions, and the relationship of upwind versus downwind-state responsibilities.[224] The EPA further addresses the topics of international emissions in Section V.C.2 and wildfires in the RTC document. The EPA also confirmed in the proposed SIP submission disapproval that several anticipated controls identified by Utah were included in the 2016v2 modeling, and yet Utah was still linked in that modeling.[225] The State included no permanent and enforceable emissions controls in its SIP submission.[226] We provide further response to comments regarding Utah's SIP submission in the RTC document. The EPA is finalizing disapproval of Utah's interstate transport SIP submission for the 2015 ozone NAAQS.

T. West Virginia

In the 2016v3 modeling, West Virginia is projected to be linked above 1 percent of the NAAQS to three nonattainment receptors and one maintenance-only receptor. It is also linked to four violating-monitor maintenance receptors. Its highest-level contribution is 1.49 ppb to New Haven County, Connecticut (AQS Site ID 090099002). A full summary of West Virginia's February 4, 2019, SIP submission was provided in the proposed SIP submission disapproval.[227] The EPA finds technical and legal flaws in the State's examination of back trajectories and arguments related to mobile sources and international emissions.[228] The EPA further addresses the topics of mobile sources and international emissions in Section V.C.1 and in Section V.C.2, respectively. The State did not conduct an adequate Step 3 analysis.[229] West Virginia argued in its SIP submission that it had already implemented all cost-effective controls. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion.[230] The EPA also confirmed in the proposed SIP submission disapproval that specific EGU shutdowns identified by West Virginia were included in the 2016v2 modeling, which continued to show West Virginia was linked at Step 2.[231] As explained in Section V.B.9, a state may not rely on non-SIP measures to satisfy SIP requirements, and reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[232] Further, the State's reliance on the cost-effectiveness threshold in the CSAPR Update is insufficient for a more protective NAAQS.[233] The State included no permanent and enforceable emissions controls in its SIP submission.[234] We provide further response to comments regarding West Virginia's SIP submission in the RTC document. The EPA is finalizing disapproval of West Virginia's interstate transport SIP submission for the 2015 ozone NAAQS.

U. Wisconsin

In the 2016v3 modeling, Wisconsin is projected to be linked above 1 percent of the NAAQS to three maintenance-only receptors. It is also linked to five violating-monitor maintenance receptors. Its highest-level contribution is 2.86 ppb to Cook County, Illinois (AQS Site ID 170314201). A full summary of Wisconsin's September 14, 2018, SIP submission was provided in the proposed SIP submission disapproval.[235] The State did not assess in its SIP submission whether the state was linked at Step 2,[236] and did not conduct an adequate Step 3 analysis.[237] The State included an insufficient evaluation of additional emissions control opportunities.[238] Further, as explained in Section V.B.9, reliance on prior transport FIPs such as the CSAPR Update is not a sufficient analysis at Step 3.[239] The EPA found additional inadequacies and legal flaws in Wisconsin's submission.[240] The State included no permanent and enforceable emissions controls in its SIP submission.[241] We provide further response to comments regarding

[212] 87 FR 9826–9829.
[213] Id. at 9831.
[214] Id. at 9831–9834.
[215] Id. at 9831, 9834.
[216] Id. at 9832–9833, Evaluation of TCEQ Modeling TSD.
[217] 87 FR 9834.
[218] Id. at 31475–31477.
[219] Id. at 31480–31481.
[220] Id. at 31478.
[221] *See also* id. at 31479–31481, 31482.
[222] Id. at 31481–31483.
[223] Id. at 31482
[224] Id. at 31481–31483.
[225] Id. at 31483.
[226] Id.
[227] Id. at 9522–9524.
[228] Id. at 9526–9527, 9528.
[229] Id. at 9527–9532.
[230] Id. at 9528–9529.
[231] Id. at 9529–9530.
[232] *See also* id. at 9530–9532.
[233] Id. at 9531.
[234] Id. at 9532.
[235] Id. at 9851.
[236] Id. at 9875.
[237] Id. at 9875–9876.
[238] Id. at 9876.
[239] *See also* id.
[240] Id.
[241] Id. at 9876–9877.

Wisconsin's SIP submission in the RTC document. Although EPA proposed to disapprove both prong 1 and prong 2 of Wisconsin's SIP submission, the present record, including the results of the 2016v3 modeling, indicates that Wisconsin is not linked to any nonattainment receptors.[242] The EPA is finalizing a partial approval of Wisconsin's interstate transport SIP submission for the 2015 ozone NAAQS as to prong 1 and a partial disapproval as to prong 2.

V. Response to Key Comments

The EPA received numerous comments on the proposed action which are summarized in the RTC document along with the EPA's responses to those comments in Docket ID No. EPA–HQ–OAR–2021–0663. Each comment in its entirety is available in the relevant regional docket(s) for this action.[243] The following sections summarize key comments and the EPA's responses.

A. SIP Evaluation Process

1. Relationship Between Timing of Proposals To Disapprove SIPs and Promulgate FIPs

Comment: Comments alleged generally that the timing of the EPA's proposed actions on the SIP submissions in relation to proposed FIPs was unlawful, unfair, or both. Some comments claimed that the sequence of the EPA's actions is improper, unreasonable, or bad policy. Several commenters asserted that because the EPA proposed FIPs (or, according to some, promulgated FIPs, which is not factually correct) prior to finalizing disapproval of the state SIP submission, the EPA allegedly exceeded its statutory authority and overstepped the states' primary role in addressing the good neighbor provision under CAA section 110.[244]

EPA Response: The EPA disagrees. The EPA has followed the Clean Air Act provisions, which prescribe specified maximum amounts of time for states to make SIP submissions, for the EPA to act on those submissions, and for the EPA to promulgate FIPs if necessary, but do not prohibit the EPA from acting before that time elapses. Nothing relieves the EPA from its statutory obligation to take final action on complete SIP submissions before the Agency within the timeframes prescribed by the statute.[245] The EPA's proposed FIP does not constitute the ''promulgation'' of a FIP because the proposed FIP is not a final action that imposes any requirements on sources or states. And although the EPA's FIP authority is not at issue in this action, the EPA notes the Agency has been clear that it will not finalize a FIP for any state until predicate authority is established for doing so under CAA section 110(c)(1). 87 FR 20036, 20057 (April 6, 2022) (''The EPA is proposing this FIP action now to address twenty-six states' good neighbor obligations for the 2015 ozone NAAQS, but the EPA will not finalize this FIP action for any state unless and until it has issued a final finding of failure to submit or a final disapproval of that state's SIP submission.''). The EPA strongly disagrees that *proposing* a FIP prior to proposing or finalizing disapproval of a SIP submission oversteps the Agency's authority. Indeed, the ability to propose a FIP before finalizing a SIP disapproval follows ineluctably from the structure of the statute, which, as the Supreme Court recognized in *EME Homer City,* does not oblige the EPA ''to wait two years or postpone its [FIP] action even a single day.'' 572 U.S. at 509. If the EPA can finalize a FIP immediately upon disapproving a SIP, then surely the EPA must have the authority to propose that FIP before taking final action on the SIP submission. *Accord Oklahoma* v. *U.S. EPA,* 723 F.3d 1201, 1223 (10th Cir. 2013).

It is true that the EPA would not be legally authorized to *finalize* a FIP for any state unless and until the EPA formally *finalizes* a disapproval of that state's SIP submission (or makes a finding of failure to submit for any state that fails to make a complete SIP submission), per CAA section 110(c), but the EPA has not yet finalized a FIP for any state for good neighbor obligations for the 2015 ozone NAAQS. Further, the sequencing of our actions here is consistent with the EPA's past practice in our efforts to timely address good neighbor obligations. For example, at the time the EPA proposed the CSAPR Update FIPs in December of 2015, we had not yet proposed action on several states' SIP submissions but finalized those SIP disapproval actions prior to finalization of the FIP.[246]

Additional comments on cooperative federalism are addressed in Section V.B.5.

Further, The D.C. Circuit in *Wisconsin* held that states and the EPA are obligated to fully address good neighbor obligations for ozone ''as expeditiously as practical'' and in no event later than the next relevant downwind attainment dates found in CAA section 181(a),[247] and states and the EPA may not delay implementation of measures necessary to address good neighbor requirements beyond the next applicable attainment date without a showing of impossibility or necessity.[248] It is important for the states and the EPA to assure that necessary emissions reductions are achieved, to the extent feasible, by the 2023 ozone season to assist downwind areas with meeting the August 3, 2024, attainment deadline for Moderate nonattainment areas. Further, the D.C. Circuit in *Wisconsin* emphasized that the EPA has the authority under CAA section 110 to structure its actions so as to ensure necessary reductions are achieved by the downwind attainment

[242] The EPA received a comment that it would be arbitrary and capricious for the EPA to finalize a full disapproval of Tennessee's good neighbor SIP submission (both prong 1 and prong 2) if EPA concluded the State is linked only to a maintenance-only receptor (prong 2).The EPA is deferring final action on Tennessee's good neighbor SIP submission, but in reviewing linkages in the 2016v3 modeling we determined that Minnesota and Wisconsin are not linked above 1 percent of the NAAQS to any nonattainment receptors (prong 1) but are linked to maintenance-only receptors (prong 2); these States are receiving partial approvals and partial disapprovals.

[243] *See* the memo ''Regional Dockets Containing Additional Supporting Materials for Final Action on 2015 Ozone NAAQS Good Neighbor SIP Submissions'' in the docket for this action, for a list of all regional dockets.

[244] The EPA notes the commenters' reference to FIPs is to proposed good neighbor FIPs for the 2015 ozone NAAQS that were proposed separately from this rulemaking action. 87 FR 20036 (April 6, 2022).

[245] Although the EPA anticipates responding to comments related to the EPA's FIP authority in a separate FIP rulemaking, the EPA notes with regard to the procedural timing concerns raised in comments on this action that the Supreme Court confirmed in *EME Homer City Generation,* ''EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit.'' 572 U.S. 489 at 509. The procedural timeframes under CAA section 110 do not function to establish a norm or expectation that the EPA must or should use the full amount of time allotted, particularly when doing so would place the Agency in conflict with the more ''central'' statutory objective of meeting the NAAQS attainment deadlines in the Act. *EME Homer City,* 572 U.S. 489, 509 (2014). *See also Wisconsin,* 938 F.3d at 318, 322; *Sierra Club* v. *EPA,* 294 F.3d 155, 161 (D.C. Cir. 2002) (*Sierra Club*).

[246] The proposed CSAPR Update was published on December 3, 2015, and included proposed FIPs for Indiana, Louisiana, New York, Ohio, Texas, and Wisconsin. 80 FR 75705. At that time, the EPA had not yet even proposed action on good neighbor SIP submissions for the 2008 ozone NAAQS from Indiana, Louisiana, New York, Ohio, Texas, and Wisconsin; however, the EPA subsequently proposed and finalized these disapprovals before finalizing the CSAPR Update FIPs, published on October 26, 2016 (81 FR 74504). *See* 81 FR 38957 (June 15, 2016) (Indiana); 81 FR 53308 (August 12, 2016) (Louisiana); 81 FR 58849 (August 26, 2016) (New York); 81 FR 38957 (June 15, 2016) (Ohio); 81 FR 53284 (August 12, 2016) (Texas); 81 FR 53309 (August 12, 2016) (Wisconsin).

[247] *Wisconsin,* 938 F.3d at 313–14 (citing *North Carolina,* 531 F.3d at 911–12.

[248] *See Wisconsin,* 938 F.3d at 320.

dates,[249] the next of which for the 2015 ozone NAAQS is now the Moderate area attainment date of August 3, 2024.[250] The court pointed out that the CAA section 110 schedule of SIP and FIP deadlines is procedural whereas the attainment schedule is ''central to the regulatory scheme[.]'' [251] Thus, the sequence and timing of the EPA's action in disapproving these SIP submissions is informed by the need to ensure that any necessary good neighbor obligations identified in the separate FIP rulemaking are implemented as expeditiously as practicable and no later than the next attainment date. As explained in our proposed disapproval, analysis (and, if possible, implementation) of good neighbor obligations should begin in the 2023 ozone season. *See, e.g.,* 87 FR 9798, 9801–02 (Feb. 22, 2022). Indeed, states' and the EPA's analysis would have been more appropriately aligned with 2020, rather than 2023 (as had been presented in the EPA's March 2018 memorandum [252]), corresponding with the 2021 Marginal area attainment date. However, that clarification in legal obligations was not established by case law until 2020. *See Maryland,* 958 F.3d at 1203–04.

In short, nothing in the language of CAA section 110(c) prohibits the EPA from proposing a FIP as a backstop, to be finalized and implemented only in the event that a SIP submission is first found to be deficient and final disapproval action on the SIP submission is taken. Such an approach is a reasonable and prudent means of assuring that the statutory obligation to reduce air pollution affecting the health and welfare of those living in downwind states is implemented without delay, either via a SIP, or where such plan is deficient, via a FIP. The sequencing of the EPA's actions here is therefore reasonably informed by its legal obligations under the CAA, including in recognition of the fact that the implementation of necessary emissions reductions to eliminate significant contribution and thereby protect human health and welfare is already several years delayed. The EPA shares additional responses related to the timing of 2015 ozone NAAQS good neighbor actions in Section V.A.

Comment: Some comments allege the EPA is depriving States of the opportunity to target specific emissions reductions opportunities, or the opportunity to revise their submissions at any point in the future.

EPA Response: The EPA disagrees. The EPA has repeatedly emphasized that states have the freedom at any time to develop a revised SIP submission and submit that to the EPA for approval, and this remains true. *See* 87 FR 20036, 20051 (April 6, 2022); 86 FR 23054, 23062 (April 30, 2021); 81 FR 74504, 74506 (Oct. 26, 2016). In the proposed FIPs, as in prior transport actions, the EPA discusses a number of ways in which states could take over or replace a FIP, *see* 87 FR 20036, 20149–51 (Section VII.D: ''Submitting A SIP''); *see also id.* at 20040 (noting as one purpose in proposing the FIP that ''this proposal will provide states with as much information as the EPA can supply at this time to support their ability to submit SIP revisions to achieve the emissions reductions the EPA believes necessary to eliminate significant contribution''). If, and when, the EPA receives a SIP submission that satisfies the requirements of CAA section 110(a)(2)(D)(i)(I), the Agency will take action to approve that SIP submission.

Comment: Some commenters assert that the EPA is disapproving SIP submissions for the sole purpose of pursuing an alleged objective of establishing nation-wide standards in FIPs. Other commenters point to the proposed FIPs to make arguments that the EPA's decision to finalize disapproval of the SIPs is an allegedly foregone conclusion or that the EPA has allegedly failed to provide the opportunity for meaningful public engagement on the proposed disapproval of the SIPs.

EPA Response: The EPA disagrees as the facts do not support this assertion. To date, the EPA has approved 24 good neighbor SIPs for the 2015 ozone NAAQS: Alaska,[253] Colorado,[254] Connecticut,[255] Delaware,[256] District of Columbia,[257] Florida,[258] Georgia,[259] Hawaii,[260] Idaho,[261] Iowa,[262] Kansas,[263] Maine,[264] Massachusetts,[265] Montana,[266] Nebraska,[267] New Hampshire,[268] North Carolina,[269] North Dakota,[270] Oregon,[271] Rhode Island,[272] South Carolina,[273] South Dakota,[274] Vermont,[275] and Washington.[276]

The policy judgments made by the EPA in all actions on 2015 ozone NAAQS good neighbor SIP submissions, including approval actions, reflect consistency with relevant good neighbor case law and past agency practice implementing the good neighbor provision as reflected in the original CSAPR, CSAPR Update, Revised CSAPR Update, and related rulemakings. Employing a nationally consistent approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport dating back to the NO_X SIP Call [63 FR 57356 (October 27, 1998)] have necessitated the application of a uniform framework of policy judgments to ensure an ''efficient and equitable'' approach. *See EME Homer City,* 572 U.S. at 519. In any case, the approach of the proposed transport FIP is not the subject of this SIP disapproval. This rulemaking does not impose any specific emissions control measures on the states. Nor is the EPA disapproving these SIP submittals because they did not follow exactly the control strategies in the proposed FIP—the EPA has repeatedly indicated openness to alternative approaches to addressing interstate pollution obligations, but for reasons explained elsewhere in the rulemaking record, the EPA finds that none of the states included in this action submitted approvable approaches to addressing those obligations.

The EPA disputes the contentions that the FIP proposal itself indicates that the EPA did not earnestly examine the SIP submissions for compliance with the CAA or have an appropriate rationale

[249] *Wisconsin,* 938 F.3d at 318 (''When EPA determines a State's SIP is inadequate, the EPA presumably must issue a FIP that will bring that State into compliance before upcoming attainment deadlines, even if the outer limit of the statutory timeframe gives the EPA more time to formulate the FIP.'') (citing *Sierra Club,* 294 F.3d at 161).

[250] *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

[251] *Wisconsin,* 938 F.3d at 322 (''Delaware's argument leans too heavily on the SIP submission deadline. SIP submission deadlines, unlike attainment deadlines, are 'procedural' and, therefore, not 'central to the regulatory scheme.' '') (citing *Sierra Club,* 294 F.3d at 161).

[252] *See* March 2018 memorandum.

[253] 84 FR 69331 (December 18, 2019).

[254] 87 FR 61249 (October 11, 2022).

[255] 86 FR 71830 (December 20, 2021).

[256] 85 FR 25307 (May 1, 2020).

[257] 85 FR 5570 (January 31, 2020).

[258] 86 FR 68413 (December 2, 2021).

[259] Id.

[260] 86 FR 73129 (December 27, 2021).

[261] 85 FR 65722 (October 16, 2020).

[262] 87 FR 22463 (April 15, 2022).

[263] 87 FR 19390 (April 4, 2022).

[264] 86 FR 45870 (August 17, 2021).

[265] 85 FR 5572 (January 31, 2020).

[266] 87 FR 21578 (April 12, 2022).

[267] 85 FR 21325 (April 17, 2020).

[268] 86 FR 45870 (August 17, 2021).

[269] 86 FR 68413 (December 2, 2021).

[270] 85 FR 20165 (April 10, 2020).

[271] 84 FR 22376 (May 17, 2019).

[272] 86 FR 70409 (December 10, 2021).

[273] 86 FR 68413 (December 2, 2021).

[274] 85 FR 67653 (October 26, 2020).

[275] 85 FR 34357 (June 4, 2020).

[276] 83 FR 47568 (September 20, 2018).

for proposing to disapprove certain SIP submissions. The EPA also disputes that the FIP proposal indicates that the EPA did not intend to consider comments on the proposed disapprovals. Comments making claims the EPA did not follow proper administrative procedure have been submitted utilizing the very notice and comment process these comments claim the EPA is skipping, and these claims are factually unsupported. Comments related to the length of the comment period and claims of ''pretext'' are addressed in the RTC document.

Comment: Several comments pointed out how hard many states have worked to develop an approvable SIP submission.

EPA Response: The EPA acknowledges and appreciates states' efforts to develop approvable SIPs. Cooperative federalism is a cornerstone of CAA section 110, and the EPA strives to collaborate with its state partners. The timing of the EPA's 2015 ozone NAAQS good neighbor actions is not in any way intended to call into question any state's commitment to develop approvable SIPs. The EPA evaluated each SIP submission on its merits. The EPA relies on collaboration with state air agencies to ensure SIP submissions are technically and legally defensible, and the Agency's action here is in no way meant to undermine that collaboration between state and Federal partners respecting SIP development.

Comment: Several comments make various arguments about when the EPA can finalize FIPs. Some commenters argue that CAA section 110(c)(1) guarantees states an additional two years to correct their SIP submissions before the EPA finalizes a FIP. Others argue that the notice and comment requirements of the Administrative Procedures Act mandate that the EPA finalize a SIP submission disapproval before proposing a FIP. One commenter suggested that a state must be allowed to fully exhaust its judicial remedies to challenge a SIP submission disapproval before the EPA can promulgate a FIP. Commenters also raise concerns about the analysis and requirements in the proposed FIPs.

EPA Response: Comments opining on when the EPA is legally authorized to propose or finalize a FIP are outside the scope of this action. While the EPA acknowledges that the Agency has no obligation or authority to finalize a FIP until finalizing a disapproval of a SIP submission or determining that a state failed to submit a complete SIP submission (CAA section 110(c)(1)), this action is limited to determining whether the covered SIP submissions meet the requirements of CAA section 110(a)(2)(D)(i)(I). For the same reason, comments criticizing specific substantive requirements or implementation timelines in the proposed FIPs are beyond the scope of this action.

2. Requests for Additional Time To Revise SIP Submissions

Comment: Some commenters argue that the EPA must or should delay action on these SIP submissions so that states can reexamine and resubmit SIP submissions. Other commenters argue that states must be given more time to re-examine and resubmit their SIP submission for various reasons, including the substantive requirements in the proposed FIPs.

EPA Response: The EPA notes that there is no support in the Clean Air Act for such a delay. CAA section 110(a)(1) requires states to adopt and submit SIP submissions meeting certain requirements including the requirements of CAA section 110(a)(2)(D)(i)(I), ''within 3 years (or such shorter period as the Administrator prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof).'' CAA section 110(a)(1). The submission deadline clearly runs from the date of promulgation of the NAAQS, which for the 2015 ozone NAAQS was October 1, 2015. 80 FR 65291 (Oct. 26, 2015). In addition, while the Administrator is given authority to prescribe a period shorter than three years for the states to adopt and submit such SIP submissions, the Act does not give the Administrator authority to lengthen the time allowed for CAA section 110(a)(2) submissions. And the EPA would be in violation of court-ordered deadlines if it deferred taking final action beyond January 31, 2023, for all but two of the states covered by this action.[277]

Comments asserting that the EPA must give more time to states to correct deficiencies and re-submit conflict with the controlling caselaw in that they would elevate the maximum timeframes allowable within the procedural framework of CAA section 110 over the attainment schedule of CAA section 181 that the D.C. Circuit has now held multiple times must be the animating focus in the timing of good neighbor obligations. The D.C. Circuit in *Wisconsin* held that states and the EPA are obligated to fully address good neighbor obligations for ozone ''as expeditiously as practical'' and in no event later than the next relevant downwind attainment dates found in CAA section 181(a),[278] and the EPA may not delay implementation of measures necessary to address good neighbor requirements beyond the next applicable attainment date without a showing of impossibility or necessity.[279] Further, the court pointed out that the CAA section 110 schedule of SIP and FIP deadlines is procedural, and while the EPA has complied with the mandatory sequence of actions required under section 110 here, we are mindful of the court's observation that, as compared with the fundamental substantive obligations of title I of the CAA to attain and maintain the NAAQS, the maximum timeframes allotted under section 110 are less ''central to the regulatory scheme[.]'' [280]

Comment: Other comments take the position that states are owed a second opportunity to submit SIP submissions before the EPA takes final action for various reasons, including claims that the EPA failed to issue adequate guidance or is otherwise walking back previously issued guidance. They allege that a state cannot choose controls to eliminate significant contribution until the EPA quantifies the contribution. Other comments argue that the EPA should not or cannot base the disapprovals on alleged shifts in policy that occurred after the Agency received the SIP submissions.

EPA Response: The EPA disagrees that the Agency was required to issue guidance or quantify individual states' level of significant contribution for 2015 ozone NAAQS good neighbor obligations, because as noted in *EME Homer City,* the Supreme Court clearly held that ''nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.'' [281] The Agency issued three memoranda in 2018 to provide modeling results and some ideas to states in the development of their SIP submissions. However, certain aspects of those discussions were specifically

[277] The EPA has no court-ordered deadline to take final action on the good neighbor SIP submission from Alabama dated June 21, 2022, or Utah's good neighbor SIP submission.

[278] *Wisconsin,* 938 F.3d at 313–14 (citing *North Carolina,* 531 F.3d at 911–12). On May 19, 2020, the D.C. Circuit in *Maryland,* applying the *Wisconsin* decision, held that the EPA must assess air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for the EPA's denial of a petition under CAA section 126(b). *Maryland,* 958 F.3d at 1203–04.

[279] *See Wisconsin,* 938 F.3d at 320.

[280] *Wisconsin,* 938 F.3d at 322 (''Delaware's argument leans too heavily on the SIP submission deadline. SIP submission deadlines, unlike attainment deadlines, are 'procedural' and therefore not 'central to the regulatory scheme.'") (citing *Sierra Club,* 294 F.3d at 161).

[281] *EME Homer City,* 572 U.S. at 510.

identified as not constituting agency guidance (especially Attachment A to the March 2018 memorandum, which comprised an unvetted list of outside stakeholders' ideas). Further, states' submissions did not meet the terms of the August or October 2018 memoranda addressing contribution thresholds and maintenance receptors, respectively. (*See* Section V.B for further discussion of these memoranda.) We acknowledge that the EPA reassessed air quality and states' contribution levels through additional modeling before proposing action on these SIP submissions. But that is not in any way an effort to circumvent the SIP/FIP process; rather it is an outcome of the reality that the EPA updated its modeling platform from a 2011 to a 2016 base year and updated its emissions inventory information along with other updates. There is nothing improper in the Agency improving its understanding of a situation before taking action, and the Agency reasonably must be able to act on SIP submissions using the information available at the time it takes such action. Those updates have not uniformly been used to disapprove SIPs—the new modeling for instance supported the approval of Montana's and Colorado's SIPs.[282] Nor has the new modeling prevented states from submitting new SIP submissions based on that modeling. For instance, the State of Alabama withdrew its prior submission in April of 2022, following our proposed disapproval, and submitted a new submission (further updated in June of 2022) analyzing the 2016v2 modeling used at proposal. The EPA is acting on that new submission and evaluating the new arguments the State developed regarding the more recent modeling. Nonetheless, as explained in the EPA's proposed disapproval of Alabama's new submission and in Section IV.A, the new arguments that Alabama has presented in its more recent submission do not lead the EPA to a contrary conclusion that its SIP submission should be approved.[283] This demonstrates two points contrary to commenters' contentions: first, the EPA is following the science and is making nationally consistent determinations at Steps 1 and 2, based on its review of each state's submission; and second, the fact that states made submissions based on the 2011-based modeling results presented in the March 2018 memorandum rather than on the most recent modeling results is not prejudicial to the outcome of the EPA's analysis, as our action on Alabama's more recent submission evaluating the State's arguments with respect to the newer, 2016-based modeling makes clear.

Contrary to commenters' arguments, the EPA had no obligation to issue further guidance, define obligations, or otherwise clarify or attempt to interpret states' responsibilities since the issuance of the 2018 memoranda, prior to acting on these SIP submissions. States themselves were aware or should have been aware of the case law developments in *Wisconsin* and in *Maryland,* which called into question the EPA's use of 2023 as the analytical year in the March 2018 memorandum. Those decisions were issued in 2019 and 2020 respectively, yet no state moved to amend or supplement their SIP submissions with analysis of an earlier analytical year or to otherwise bring their analyses into conformance with those decisions (*e.g.,* through fuller analysis of non-EGU emissions reduction potential or through treatment of international contribution). Given the Supreme Court's 2014 holding in *EME Homer City,* 572 U.S. at 508–510, which reversed a D.C. Circuit holding that the EPA *was* obligated to define good neighbor obligations,[284] states had no reason to expect the EPA would be obligated to issue further guidance to clarify requirements in the wake of those decisions. The EPA agrees with those commenters who point out that states have the first opportunity to assess and address obligations in implementing the NAAQS, but with that understanding in mind, it is notable that prior to the proposed disapprovals in February of 2022, no state moved to amend or supplement their SIP submission as the case law on good neighbor obligations evolved or in response to new modeling information as it became available.

Further, the EPA has evaluated state SIP submissions on the merits of what is contained in the submission, not the use of any particular modeling platform. The EPA disagrees with commenters' assertions that the EPA has proposed disapproval of a state's proposed SIP due to the use of a particular modeling platform. As noted previously, the EPA approved state SIP submissions that have used the earlier modeling. The EPA did not reach its conclusion to disapprove states' SIP submissions based on the use of the 2016v2 emissions platform standing alone. Use of that platform, or any other modeling platform, is not *ipso facto* grounds for disapproval at all. As evident in the proposed disapprovals and summarized in Section IV, the EPA evaluated the SIP submissions based on the merits of the arguments put forward in each SIP submission.

3. Alleged Harm to States Caused by Time Between SIP Submission and the EPA's Action

Comment: Many comments pointed to the EPA's statutory deadlines to take action on the SIP submissions to argue that the EPA's delay harmed the upwind state's interests because now the EPA may conclude they need to reduce their emissions to satisfy their good neighbor obligations in the separate FIP rulemaking whereas had the EPA acted by statutory deadlines using the older modeling, they might have had their SIP submissions approved. Some commenters suggest that the EPA never gave the state SIP submissions the appropriate review or suggest that the EPA's review of the SIP submissions was prejudiced by the FIP it had proposed.

EPA Response: The EPA acknowledges that the Agency's statutory deadlines to take final action on these SIP submissions generally fell in 2020 and 2021. However, the delay in acting caused no prejudice to the upwind states. First, this action to disapprove SIP submissions itself will not impose any requirements or penalties on any state or sources within that state. Second, these delays have primarily had the effect of deferring relief to downwind states and their citizens from excessive levels of ozone pollution under the good neighbor provision. Further, the EPA has generally had a practice of correcting its action on good neighbor SIP submittals if later information indicates that a prior action was in error—thus, it is not the case that simply having obtained an approval based on earlier modeling would have meant a state would be forever insulated from later being subject to corrective or remedial good neighbor actions. *See, e.g.,*86 FR 23056, 23067–68 (April 30, 2021) (error correcting Kentucky's approval to a disapproval and promulgating FIP addressing Kentucky's outstanding 2008 ozone NAAQS good neighbor obligations); 87 FR 20036, 20041 (April 6, 2022) (proposing error correction for Delaware's 2015 ozone NAAQS SIP approval to a disapproval based on updated air quality modeling). Finally, there is no basis in the CAA to use the Agency's own delay as a basis to nullify

[282] 87 FR 6095, 6097 at n. 15 (February 3, 2022) (Montana proposal); 87 FR 27050, 27056 (May 6, 2022) (Colorado, proposal), 87 FR 61249 (October 11, 2022) (Colorado, final).

[283] 87 FR 64412 (October 25, 2022).

[284] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) (*EME Homer City I*).

the authority granted in the Act to address the nation's air pollution problems, as the statute itself contains other forms of adequate remedy. CAA section 304(a)(2) provides for judicial recourse where there is an alleged failure by the agency to perform a nondiscretionary duty, and that recourse is for the Agency to be placed on a court-ordered deadline to address the relevant obligations. *Accord Oklahoma,* 723 F.3d at 1223–24; *Montana Sulphur and Chemical Co.* v. *U.S. EPA,* 666 F.3d 1174, 1190–91 (9th Cir. 2012).

Comment: Some comments contend that the EPA's delay in acting on SIP submissions was a deliberate attempt to circumvent the SIP/FIP process, unduly burden the states, or to defer making information available to states. Comments allege that the EPA intentionally stalled an evaluative action until the perceived ''facts'' of the situation changed such that the analyses submitted by states were rendered outdated.

EPA Response: The EPA disagrees with both allegations. In this respect, it is important to review the recent history of the EPA's regulatory actions and litigation with respect to good neighbor obligations for both the 2008 and 2015 ozone NAAQS, and in particular, the substantial additional workload the Agency took on in the wake of the remand of the CSAPR Update in *Wisconsin.* In 2018, as the EPA issued the memoranda cited by commenters and planned to shift its focus to implementing the 2015 standards, it also issued the CSAPR Close-out, which made an analytical finding that there were no further obligations for 21 states for the 2008 standards following the CSAPR Update. 83 FR 65878 (Dec. 21, 2018). However, contrary to the EPA's understanding that it had fully addressed good neighbor obligations for the 2008 ozone NAAQS, the D.C. Circuit's decisions in *Wisconsin* (remanding the CSAPR Update) and in *New York* (vacating the CSAPR Close-out), forced the Agency to quickly pivot back to addressing remaining obligations under the 2008 standards. *Wisconsin* v. *EPA,* 938 F.3d 303 (D.C. Cir. 2019); *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019). The EPA was subject to renewed deadline suit litigation under CAA section 304, which led to a March 15, 2021, deadline to take final action on several states whose FIPs had been remanded and were incomplete in the wake of the CSAPR Close-out vacatur. *New Jersey* v. *Wheeler,* 475 F.Supp.3d 308 (S.D.N.Y. 2020). Throughout 2020 and 2021, the EPA was therefore focused on an unexpected rulemaking obligation to complete good neighbor requirements as to the states with remanded CSAPR Update FIPs. This led to the EPA proposing and then issuing an economically significant, major rule assessing additional EGU emissions reduction obligations as well as presenting updated air quality modeling analysis using novel techniques and presenting information on a host of non-EGU industrial sources for the first time, *i.e.,* the Revised CSAPR Update, 86 FR 23054 (April 30, 2021). That rule is now currently subject to judicial review in the D.C. Circuit, *Midwest Ozone Group* v. *EPA,* No. 21–1146 (D.C. Cir. argued Sept. 28, 2022).[285] The EPA has also been in the process of reviewing and acting upon many states' good neighbor SIPs where the available information indicates that an approval of the state's submission was appropriate.[286]

Finally, the Agency needed time to review and evaluate the SIP submissions in a coordinated fashion to act on all the states' submissions in a consistent manner. As the EPA explained in the proposed disapproval action, consistency in defining CAA obligations is critically important in the context of addressing a regional-scale pollutant like ozone. *See, e.g.,* 87 FR 9807 n.48. Through coordinated development of the bases for how the Agency could act on the SIP submissions, while also evaluating the contours of a potential Federal plan to implement obligations where required, the EPA sequenced its deliberations and decision making to maximize efficient, consistent, and timely action, in recognition of the need to implement any necessary obligations ''as expeditiously as practicable.'' [287] The downsides of commenters' policy preference in favor of giving states another opportunity to develop SIP submissions, or in first acting on each SIP submission before proposing a FIP, are that such a sequence of actions would have led to multiple years of additional delay in addressing good neighbor obligations. Even if such a choice was available to the Agency using the CAA section 110(k)(5) SIP call mechanism, it was entirely reasonable for the EPA to decline to use that mechanism in this instance. (EPA further addresses comments in support of a SIP call approach in the RTC document.)

In short, commenters' notion that the EPA was deliberately or intentionally deferring or delaying action on these SIP submissions to circumvent any required legal process or reach any specific result is simply incorrect. Commenters have not supplied any evidence to support the claim either that any legal process was circumvented or that the Agency's conduct was in bad faith. *See Biden* v. *Texas,* 142 S.Ct. 2528, 2546–47 (2022) (presumption of regularity attends agency action absent a ''strong showing of bad faith or improper behavior'') (citing *Citizens to Protect Overton Park* v. *Volpe,* 401 U.S. 302, 420 (1971); *SEC* v. *Chenery,* 318 U.S. 80, 87 (1943)).

4. Use of Updated Modeling

Comment: Comments allege that by relying on modeling not available at the time of SIP submission development, the EPA ''moved the goal post.'' Comments note the timeframes set out for action on SIPs, citing section 110 of the Act, and allege that by failing to act on SIP submissions in a timely manner and basing such actions on new modeling, the EPA imposes an arbitrary and capricious standard. Comments state that the EPA should not disapprove a SIP based on data not available to states during development of the SIP submissions or to the EPA during the period statutorily allotted for the EPA to take final action on SIP submissions.

EPA Response: In response to comments' claims that the EPA has inappropriately changed states' obligations for interstate transport by relying on updated modeling not available to states at the time they prepared their SIP submissions, the EPA disagrees. As an initial matter, the EPA disagrees with comment's claiming that the agency expected state air agencies to develop a SIP submission based on

[285] During this time, the EPA also fulfilled its obligations to act on several petitions brought by downwind states under section 126(b) of the CAA. These actions culminated in litigation and ultimately adverse decisions in *Maryland* and *New York* v. *EPA. Maryland v,* 958 F.3d; *New York* v. *EPA,* 964 F.3d 1214, 2020 WL 3967838 (D.C. Cir. 2020). Further review and action on these remands remains pending before the agency.

[286] In chronological order: 83 FR 47568 (September 20, 2018) (Washington); 84 FR 69331 (December 18, 2019) (Alaska); 84 FR 22376 (May 17, 2019) (Oregon); 85 FR 5570 (January 31, 2020) (Washington, DC); 85 FR 5572 (January 31, 2020) (Massachusetts); 85 FR 20165 (April 10, 2020) (North Dakota); 85 FR 21325 (April 17, 2020) (Nebraska); 85 FR 25307 (May 1, 2020) (Delaware); 85 FR 34357 (June 4, 2020) (Vermont); 85 FR 65722 (October 16, 2020) (Idaho); 85 FR 67653 (October 26, 2020) (South Dakota); 86 FR 45870 (August 17, 2021) (Maine and New Hampshire); 86 FR 68413 (December 2, 2021) (Florida, Georgia, North Carolina, and South Carolina); 86 FR 70409 (December 10, 2021) (Rhode Island); 86 FR 71830 (December 20, 2021) (Connecticut); 86 FR 73129 (December 27, 2021) (Hawaii); 87 FR 19390 (April 4, 2022) (Kansas); 87 FR 21578 (April 12, 2022) (Montana); 87 FR 22463 (April 15, 2022) (Iowa); and 87 FR 61249 (October 11, 2022) (Colorado).

[287] CAA section 181(a); *Wisconsin,* 938 F.3d at 313–14 (citing *North Carolina,* 531 F.3d at 911–12).

some unknown future data. The EPA recognizes that states generally developed their SIP submissions with the best available information at the time of their development. As stated in the proposals, the EPA did not evaluate states' SIP submissions based solely on the 2016v2 emissions platform (or the 2016v3 platform, which incorporates comments generated during the public comment period on the proposed SIP actions and which supports these final SIP disapproval actions). We evaluated the SIP submissions based on the merits of the arguments put forward in each SIP submission, which included any analysis put forward by states to support their conclusions. Thus, we disagree with commenters who allege the Agency has ignored the information provided by the states in their submissions. Indeed, the record for this action reflects our extensive evaluation of states' air quality and contribution analyses. *See* generally Section IV, which summarizes our evaluation for each state.

We disagree with commenters who advocate that the EPA's evaluation of these submissions must be limited to the information available to states at the time they made their submissions, or information at the time of the deadline for the EPA to act on their submissions. It can hardly be the case that the EPA is prohibited from taking rulemaking action using the best information available to it at the time it takes such action. Nothing in the CAA suggests that the Agency must deviate from that general principle when acting on SIP submissions. While CAA section 110(k)(2) specifies a time period in which the Administrator is to act on a state submission, neither this provision nor any other provision of the CAA specifies that the remedy for the EPA's failure to meet a statutory deadline is to arrest or freeze the information the EPA may consider to what was available at the time of a SIP submission deadline under CAA section 110. Indeed, in the interstate transport context, this would lead to an anomalous result. For example, the D.C. Circuit rejected an argument made by Delaware against the CSAPR Update air quality analysis that the EPA was limited to reviewing air quality conditions in 2011 (rather than 2017) at the time of the statutory deadline for SIP submittals. The court explained,

> Delaware's argument leans too heavily on the SIP submission deadline. SIP submission deadlines, unlike attainment deadlines, are ''procedural'' and therefore not ''central to the regulatory scheme.'' *Sierra Club,* 294 F.3d at 161. Nor can Delaware's argument be reconciled with the text of the Good Neighbor Provision, which prohibits upwind States from emitting in amounts ''which *will*'' contribute to downwind nonattainment. 42 U.S.C. 7410(a)(2)(D)(i) (emphasis added). Given the use of the future tense, it would be anomalous for EPA to subject upwind States to good neighbor obligations in 2017 by considering which downwind States were once in nonattainment in 2011.

Wisconsin, 903 F.3d at 322. By the same token, here, holding the EPA to a consideration only of what information states had available regarding the 2023 analytic year at the time of their SIP submissions or at the time of a deadline under CAA section 110, would likewise elevate the ''procedural'' deadlines of CAA section 110 above the substantive requirements of the CAA that are ''central to the regulatory scheme.'' Doing so here would force the Agency to act on these SIP submissions knowing that more recent refined, high quality, state-of-the-science modeling and monitoring data would produce a different result in our forward-looking analysis of 2023 than the information available in 2018. Nothing in the CAA dictates that the EPA must be forced into making substantive errors in its good neighbor analysis on this basis.

We relied on CAMx Version 7.10 and the 2016v2 emissions platform to make updated determinations regarding which receptors would likely exist in 2023 and which states are projected to contribute above the contribution threshold to those receptors. As explained in the preamble of the EPA's proposed actions and further detailed in the document titled ''Air Quality Modeling TSD: 2015 Ozone National Ambient Air Quality Standards Proposed Interstate Transport Air Plan Disapproval'' and 2016v2 Emissions Inventory TSD, both available in Docket ID no. EPA–HQ–OAR–2021–0663, the 2016v2 modeling built off previous modeling iterations used to support the EPA's action on interstate transport obligations. The EPA continuously refines its modeling to ensure the results are as indicative as possible of air quality in future years. This includes adjusting our modeling platform and updating our emissions inventories to reflect current information.

Additionally, we disagree with comments claiming that the 2016v2 modeling results were sprung upon the states with the publication of the proposed disapprovals. The EPA has been publishing a series of data and modeling releases beginning as early as the publication of the 2016v1 modeling with the proposed Revised CSAPR Update in November of 2020, which could have been used to track how the EPA's modeling updates were potentially affecting the list of possible receptors and linkages for the 2015 ozone NAAQS in the 2023 analytic year. The 2016-based meteorology and boundary conditions used in the modeling have been available through the 2016v1 platform, which was used for the Revised CSAPR Update (proposed in November of 2020, 85 FR 68964). The updated emissions inventory files used in the current modeling were publicly released September 21, 2021, for stakeholder feedback, and have been available on our website since that time.[288] The CAMx modeling software that the EPA used has likewise been publicly available for over a year. CAMx version 7.10 was released by the model developer, Ramboll, in December 2020. On January 19, 2022, we released on our website and notified a wide range of stakeholders of the availability of both the modeling results for 2023 and 2026 (including contribution data) along with many key underlying input files.[289]

By providing the 2016 meteorology and boundary conditions (used in the 2016v1 version) in fall of 2020, and by releasing updated emissions inventory information used in 2016v2 in September of 2021,[290] states and other interested parties had multiple opportunities prior to the proposed disapprovals in February of 2022 to consider how our modeling updates could affect their status for purposes of evaluating potential linkages for the 2015 ozone NAAQS. Further, by using the updated modeling results, the EPA is using the most current and technically appropriate information for this rulemaking. This modeling was not performed to ''move the goal posts'' for states but meant to provide updated emissions projections, such as additional emissions reductions for EGUs following promulgation of the Revised CSAPR Update for the 2008 ozone NAAQS, more recent information on plant closures and fuel switches, and sector trends, including non-EGU sectors. The construct of the 2016v2 emissions platform is described in the 2016v2 Emissions Modeling TSD contained in Docket ID No. EPA–HQ–OAR–2021–0663.

Finally, comments related to the timing of the EPA's action to disapprove these SIP submissions are addressed in Section V.A.1. The EPA notes the statute provides a separate remedy for agency action unlawfully delayed. In section 304 of the CAA, there is a

[288] *See https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

[289] *See https://www.epa.gov/scram/photochemical-modeling-applications.*

[290] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

process for filing suit against the EPA for its failure to comply with a non-discretionary statutory duty under the CAA. The appropriate remedy in such cases is an order to compel agency action, not a determination that the agency, by virtue of missing a deadline, has been deprived of or constrained in its authority to act. *See Oklahoma,* 723 F.3d at 1224 (''[W]hen 'there are less drastic remedies available for failure to meet a statutory deadline'—such as a motion to compel agency action—'courts should not assume that Congress intended the agency to lose its power to act.' The Court 'would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake.''') (cleaned up) (quoting *Brock* v. *Pierce County,* 476 U.S. 253, 260 (1986)).

Comment: Comments state that it is inappropriate for the EPA to revise its emissions inventory and to conduct new air quality modeling without allowing an appropriate opportunity for stakeholder review and comment and that the EPA must allow public comment on any updated (*i.e.,* 2016v3) modeling prior to use by the EPA in a final action. Comments claim that the EPA must withdraw the proposed disapproval and provide states time to develop new SIP submissions based on the updated information.

EPA Response: The EPA has evaluated a wide range of technical information and critiques of its 2016v2 emissions inventory and modeling platform following a solicitation of public feedback as well the public comment period on this action (and the proposed FIP action) and has responded to those comments and incorporated updates into the version of the modeling being used in this final action (2016v3). *See* Section III, the Final Action AQM TSD, and Section 4 of the RTC document for further discussion.

The EPA's development of and reliance on newer modeling to confirm modeling used at the proposal stage is in no way improper and is simply another iteration of the EPA's longstanding scientific and technical work to improve our understanding of air quality issues and causes going back decades. Where the 2016v3 modeling produced a potentially different outcome for states from proposal, that is reflected in this action (*e.g.,* our deferral of final action on Tennessee and Wyoming's SIP submissions).

Comment: Comments allege that EPA's modeling results have been inconsistent, questioning the reliability of the results.

EPA Response: Although some commenters indicate that our modeling iterations have provided differing outcomes and are therefore unreliable, this is not what the overall record indicates. Rather, in general, although the specifics of states' linkages may change slightly, our modeling overall has provided consistent outcomes regarding which states are linked to downwind air quality problems. For example, the EPA's modeling shows that most states that were linked to one or more receptors using the 2011-based platform (*i.e.,* the March 2018 data release) are also linked to one or more receptors using the newer 2016-based platform. Because each platform uses different meteorology (*i.e.,* 2011 and 2016) it is not at all unexpected that an upwind state could be linked to different receptors using 2011 versus 2016 meteorology.

In addition, although a state may be linked to a different set of receptors, states are often linked to receptors in the same area that has a persistent air quality problem. These differing results regarding receptors and linkages can be affected by the varying meteorology from year to year, but this does not indicate that the modeling or the EPA or the state's methodology for identifying receptors or linkages is inherently unreliable. Rather, for many states these separate modeling runs all indicated: (i) that there would be receptors in areas that would struggle with nonattainment or maintenance in the future, and (ii) that the state was linked to some set of these receptors, even if the receptors and linkages differed from one another in their specifics (*e.g.,* a different set of receptors were identified to have nonattainment or maintenance problems, or a state was linked to different receptors in one modeling run versus another).

The EPA interprets this common result as indicative that a state's emissions have been substantial enough to generate linkages at Step 2 to varying sets of downwind receptors generated under varying assumptions and meteorological conditions, even if the precise set of linkages changed between modeling runs. Under these circumstances, we think it is appropriate to proceed to a Step 3 analysis to determine what portion of a particular state's emissions should be deemed ''significant.'' We also note that only four states included in the proposed disapprovals went from being unlinked to being linked between the 2011-based modeling provided in the March 2018 memorandum and the 2016v2-based modeling—Alabama, Minnesota, Nevada, and Tennessee.

5. Cooperative Federalism and the EPA's Authority

Comment: Many comments point to the concept of cooperative federalism as embodied in the CAA to make various arguments as to why the EPA cannot or should not be allowed to exercise its independent judgment in evaluating the arguments presented by the states in the SIP submissions, and some also argue that the EPA must approve each state's submission in deference to how states choose to interpret the CAA requirements they must meet.

EPA Response: The CAA establishes a framework for state-Federal partnership to implement the NAAQS based on cooperative federalism. Under the general model of cooperative federalism, the Federal Government establishes broad standards or goals, states are given the opportunity to determine how they wish to achieve those goals, and if states choose not to or fail to adequately implement programs to achieve those goals, a Federal agency is empowered to directly regulate to achieve the necessary ends. Under the CAA, once the EPA establishes or revises a NAAQS, states have the obligation and opportunity in the first instance to develop an implementation plan under CAA section 110 and the EPA will approve SIP submissions under CAA section 110 that fully satisfy the requirements of the CAA. This sequence of steps is not in dispute.

The EPA does not, however, agree with the comments' characterization of the EPA's role in the state-Federal relationship as being ''secondary'' such that the EPA must defer to state choices heedless of the substantive objectives of the Act; such deference would be particularly inappropriate in the context of addressing interstate pollution. The EPA believes that the comments fundamentally misunderstand or inaccurately describe this action, as well as the '''division of responsibilities' between the states and the federal government'' they identify in CAA section 110 citing the *Train-Virginia* line of cases [291] and other cases.[292]

[291] *See Virginia* v. *EPA,* 108 F.3d 1397, 1407 (D.C. Cir. 1997) (*Virginia*) (quoting *Train* v. *Natural Resources Defense Council, Inc.,* 421 U.S. 60, 79 (1975) (*Train*)). The ''Train-Virginia line of cases'' are named for the U.S. Supreme Court case *Train,* 421 U.S. and to the D.C. Circuit case *Virginia,* 108 F.3d. The D.C. Circuit has described these cases as defining a ''federalism bar'' that generally recognizes states' ability to select emissions control measures in their SIPs so long as CAA requirements are met. *See, e.g., Michigan* v. *EPA,* 213 F.3d 663, 687 (D.C. Cir. 2000) (*Michigan*).

[292] *Union Elec. Co.* v. *EPA,* 427 U.S. 246 (1976), *Am. Elec. Power Co.* v. *Connecticut,* 565 U.S. 410 (2011), *Fla. Power & Light* v. *Costle,* 650 F.2d 579

Continued

Those cases, some of which pre-date the CAA amendments of 1990 resulting in the current Good Neighbor Provision,[293] stand only for the proposition that the EPA must approve state plans *if* they meet the applicable CAA requirements. But these cases say nothing about what those applicable requirements are. The EPA is charged under CAA section 110 with reviewing states' plans for compliance with the CAA and approving or disapproving them based on EPA's determinations. Thus, the EPA must ultimately determine whether state plans satisfy the requirements of the Act or not. Abundant case law reflects an understanding that the EPA must evaluate SIP submissions under the CAA section 110(k)(2) and (3).[294] If they are deficient, the EPA must so find, and become subject to the obligation to directly implement the relevant requirements through a Federal implementation plan under CAA section 110(c), unless EPA approves an applicable SIP first.[295]

The EPA responds in greater detail to these comments in the RTC document.

6. Availability of Guidance for SIP Submissions

Comment: Comments contend the EPA failed to issue guidance in a timely fashion by releasing its August 2018 memorandum 31 days prior to when SIPs addressing interstate ozone transport were due and issuing the October 2018 memorandum 18 days after those SIPs were due. Some comments additionally claim that it is unreasonable for the EPA to disapprove SIP submissions based on standards that were not defined, mandated, or required by official guidance.

EPA Response: Comments' contention is unsupported by the statute or applicable case law. Regarding the need for the EPA's guidance in addressing good neighbor obligations, in *EME Homer City,* the Supreme Court clearly held that ''nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.'' [296]

Nonetheless, as comments point out, the EPA issued three ''memoranda'' in 2018 to provide some assistance to states in developing these SIP submissions. In acting on the SIP submissions in this action, the EPA is neither rescinding nor acting inconsistently with the memoranda—to the extent the memoranda constituted agency guidance (not all the information provided did constitute guidance), information or ideas in the memoranda had not at that time been superseded by case law developments, and the memoranda's air quality and contribution data had not at that time been overtaken by updated modeling and other updated air quality information. While comments specific to each of those memoranda are addressed elsewhere in this record, we note in brief that each memorandum made clear that the EPA's action on SIP submissions would be through a separate notice-and-comment rulemaking process and that SIP submissions seeking to rely on or take advantage of any information or concepts in these memoranda would be carefully reviewed against the relevant legal requirements and technical information available to the EPA at the time it would take such rulemaking action.

B. Application of the 4-Step Interstate Transport Framework

1. Analytic Year

Comment: One comment asserted that 2023 is not an appropriate analytical year because, according to the commenter, the EPA and at least some downwind states have not in fact implemented mandatory emissions control requirements associated with their nonattainment areas, and *North Carolina* and *Wisconsin* require that upwind and downwind state obligations must be implemented ''on par.'' The comment also characterizes the EPA's invocation of *Maryland* as an inappropriate shifting of regulatory burden to upwind states.

EPA Response: This is an incorrect interpretation of the D.C. Circuit's holdings in *North Carolina, Wisconsin,* and *Maryland,* which held that the EPA and the states must align good neighbor obligations to the extent possible with the downwind areas' attainment dates. These are set by the statute and remain fixed regardless of whether downwind areas are delayed in implementing their own obligations. It would be unworkable to expect that upwind states' obligations could be perfectly aligned with each downwind area's actual timetable for implementing the relevant emissions controls, and no court has held that this is the EPA's or the states' obligation under the good neighbor provision. Further, this ignores the fact that upwind states must also address their interference with maintenance of the NAAQS, as well as the *Maryland* court's holding that good neighbor obligations should be addressed by the Marginal area attainment date for ozone under subpart 2 of part D of title I of the CAA. Both circumstances may involve situations in which the home state for an identified downwind receptor does not have a specific obligation to plan for and implement specific emissions controls while an upwind state may nonetheless be found to have good neighbor obligations. But, as the *Maryland* court recognized, the absence of specific enumerated requirements does not mean the downwind state does not have a statutorily binding obligation subject to burdensome regulatory consequences: ''Delaware must achieve attainment 'as expeditiously as practicable,''' and ''an upgrade from a marginal to a moderate nonattainment area carries significant consequences . . . .'' *Maryland,* 958 F.3d at 1204.

Further, where any downwind-state delays are unreasonable or violate statutory timeframes, the CAA provides recourse to compel the completion of such duties in CAA section 304, not to defer the elimination of significant contribution and thereby expose the public in downwind areas to the elevated pollution levels caused in part by upwind states' pollution. Regardless, in this action, 2023 aligns with the Moderate area attainment date in 2024, and all of the downwind nonattainment areas corresponding to receptor locations identified at Step 1 in this action are already classified as being in Moderate nonattainment or have been reclassified to Moderate and the relevant states face obligations to submit

(5th Cir. 1981), *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984), *Concerned Citizens of Bridesburg* v. *EPA,* 836 F.2d 777 (3d Cir. 1987), *North Carolina,* 531 F.3d 896, *Luminant,* 675 F.3d 917 (5th. Cir. 2012), *Luminant Co. LLC* v. *EPA,* 714 F.3d 841 (5th. Cir. 2013), *North Dakota* v. *EPA,* 730 F.3d 750 (8th. Cir. 2013), *EME Homer City II,* 795 F.3d 118 (D.C. Cir. 2015), and *Texas* v. *USEPA,* 829 F.3d 405 (5th. Cir. 2016).

[293] The 1970 version of the Act required SIPs to include ''adequate provisions for intergovernmental cooperation'' concerning interstate air pollution. CAA section 110(a)(2)(E), 84 Stat. 1681, 42 U.S.C. 1857c–5(a)(2)(E). In 1977, Congress amended the Good Neighbor Provision to direct States to submit SIP submissions that included provisions ''adequate'' to ''prohibi[t] any stationary source within the State from emitting any air pollutant in amounts which will . . . prevent attainment or maintenance [of air quality standards] by any other State.'' CAA section 108(a)(4), 91 Stat. 693, 42 U.S.C. 7410(a)(2)(E) (1976 ed., Supp. II). Congress again amended the Good Neighbor Provision in 1990 to its current form.

[294] *See, e.g., Virginia,* 108 F.3d at 1406. *See also, e.g., Westar Energy* v. *EPA,* 608 Fed. App'x 1, 3 (D.C. Cir. 2015) (''EPA acted *well within the bounds* of its delegated authority when it disapproved of Kansas's proposed [good neighbor] SIP.'') (emphasis added); *Oklahoma,* 723 F.3d at 1209 (upholding the EPA's disapproval of ''best available retrofit technology'' (BART) SIP, noting BART ''does not differ from other parts of the CAA—states have the ability to create SIPs, but they are subject to EPA review'').

[295] *EME Homer City Generation,* 572 U.S. at 508–510.

[296] *EME Homer City,* 572 U.S. at 510.

SIP submissions and implement reasonably available control technologies (RACT) by January 1, 2023. *See* 87 FR 60897, 60899 (October 7, 2022). The EPA further responds to this comment in the RTC document.

2. Attachment A to the March 2018 Memorandum

Comment: Comments state that states conducted their analyses based on the flexibilities listed in Attachment A of the March 2018 Memorandum. Comments cite the part of the memorandum where the EPA notes that ''in developing their own rules, states have flexibility to follow the familiar four-step transport framework (using [the] EPA's analytical approach or somewhat different analytical approaches within these steps) or alternative frameworks, so long as their chosen approach has adequate technical justification and is consistent with the requirements of the CAA.'' Comments state that the EPA's disapproval of SIP submissions that took advantage of the flexibilities is arbitrary and capricious because the EPA has changed, without communication, its consideration of what is deemed to be the ''necessary provisions'' required for an approvable SIP submission too late in the SIP submission process and because, in disapproving these SIPs, the EPA is applying a consistent set of policy judgments across all states.

EPA Response: Comments mistakenly view Attachment A to the March 2018 memorandum releasing modeling results as constituting agency guidance. The EPA further disagrees with commenters' characterization of the EPA's stance regarding the ''flexibilities'' listed (without analysis) in Attachment A. Attachment A to the March 2018 memorandum identified a ''Preliminary List of Potential Flexibilities'' that could potentially inform SIP development.[297] However, the EPA made clear in that attachment that the list of ideas were not suggestions endorsed by the Agency but rather ''comments provided in various forums'' from outside parties on which the EPA sought ''feedback from interested stakeholders.'' [298] Further, Attachment A stated, ''EPA is not at this time making any determination that the ideas discussed later are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches.'' [299] Attachment A to the March 2018 memorandum, therefore, does not constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. The EPA emphasized in this memorandum that any such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal.[300] As stated in the proposed SIP disapprovals,[301] the March 2018 memorandum provided that, ''While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision.'' [302] In this final SIP disapproval action, the EPA again affirms that certain concepts included in Attachment A to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS.

In response to comments' claims that since the time transport SIP submissions were submitted to the EPA for review, the EPA has changed, without communication, its consideration of what is deemed to be the ''necessary provisions'' required for an approvable SIP submission, the EPA disagrees. As comments note, and as stated in the proposed disapproval notifications, the EPA recognizes that states have discretion to develop their own SIP transport submissions and agrees that states are not bound to using the 4-step interstate transport framework the EPA has historically used. However, states must then provide sufficient justification and reasoning to support their analytical conclusions and emissions control strategies. *See, e.g.,* 87 FR 9798, 9801. In the SIP submissions being disapproved in this action, no state provided any enforceable emissions control strategies for approval into their SIP. The EPA has evaluated the merits of each state's arguments as to why no additional emissions reduction requirements are needed to satisfy their obligations under CAA section 110(a)(2)(D)(i)(I) for the more protective 2015 ozone NAAQS. While the EPA used its own 4-step interstate transport framework as a guide for its review to ensure a consistent and equitable evaluation of each states' submissions, the EPA has also considered states' individual arguments without predetermining the EPA's conclusions about the state's transport obligations.

It was never the Agency's intent in sharing Attachment A that states would invoke one or more of the potential ''flexibilities'' that outside parties advocated for as a basis for concluding that no additional emissions controls were necessary to address interstate transport for the more protective 2015 ozone NAAQS without proper justification. Nothing in Attachment A suggested that was the Agency's intended objective. Indeed, where certain approaches identified in Attachment A might have produced analytical conclusions requiring upwind states to reduce their emissions, no state invoking Attachment A followed through with implementing those controls. We observe this dynamic at work in Kentucky's submission, because Kentucky appended comments from the Midwest Ozone Group to its submission that demonstrated that applying a ''weighted'' approach to allocating upwind-state responsibility at Step 3 would have resulted in an emissions control obligation on Kentucky's sources, yet the State offered no explanation in its submittal why it was not adopting that approach or even what its views on that approach were. *See* 87 FR 9515. As another example, Michigan cited Attachment A to the March 2018 in developing a methodology for calculating significant contribution under which Michigan would have been responsible for eliminating up to 0.12 ppb of contribution to downwind receptors; however, the State suggested that uncertainty caused by modeling ''noise'' was too great to either require emissions reductions or demonstrate that Michigan had any linkages to receptors at all. *See* 87 FR 9860–9861. However, this explanation did not, as an analytical matter, demonstrate a level of scientific uncertainty which might allow for ignoring the results,[303]

[297] March 2018 memorandum, Attachment A.

[298] *Id.*

[299] *Id.*

[300] March 2018 memorandum.

[301] E.g., 87 FR 9487.

[302] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in docket EPA–HQ–OAR–2021–0663 or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[303] Scientific uncertainty may only be invoked to avoid comporting with the requirements of the CAA when ''the scientific uncertainty is so profound that it precludes . . . reasoned judgment'' *Massachusetts* v. *EPA,* 127 S.Ct. 1438 (2007). *See Wisconsin,* 938 F.3d at 318–19 (''Scientific uncertainty, however, does not excuse EPA's failure to align the deadline for eliminating upwind States' significant contributions with the deadline for downwind attainment of the NAAQS.''). *See also EME Homer City,* 795 F.3d at 135–36 (''We will not invalidate EPA's predictions solely because there might be discrepancies between those predictions

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particularly when the Agency has implemented good neighbor requirements at levels of ''significant contribution'' comparable to or even less than 0.12 ppb. *See Wisconsin,* 938 F.3d at 322–23 (rejecting Wisconsin's argument that it should not face good neighbor obligations for the 2008 ozone NAAQS on the basis that its emission reductions would only improve a downwind receptor by two ten-thousandths of a part per billion).

The EPA continues to neither endorse the ''flexibilities'' in Attachment A, nor stakes a position that states are precluded from relying on these concepts in the development of their good neighbor SIP submissions, assuming they could be adequately justified both technically and legally. This has been demonstrated through the EPA's extensive evaluation of the merits of each states' SIP submissions, including their attempted use of flexibilities and derivatives of the EPA's historically applied 4-step interstate transport framework.[304]

3. Step 1: October 2018 Memorandum

Comments: Comments claimed that the EPA is not honoring its October 2018 memorandum, which they claim would allow for certain monitoring sites identified as maintenance-only receptors in the EPA's methodology to be excluded as receptors based on historical data trends. They assert that the EPA is inappropriately disapproving SIP submissions where the state sufficiently demonstrated certain monitoring sites should not be considered to have a maintenance problem in 2023.

EPA Response: The October 2018 memorandum recognized that states may be able to demonstrate in their SIPs that conditions exist that would justify treating a monitoring site as not being a maintenance receptor despite results from our modeling methodology identifying it as such a receptor. The EPA explained that this demonstration could be appropriate under two circumstances: (1) the site currently has ''clean data'' indicating attainment of the 2015 ozone NAAQS based on measured air quality concentrations, or (2) the state believes there is a technical reason to justify using a design value from the baseline period that is lower than the maximum design value based on monitored data during the same baseline period. To justify such an approach, the EPA anticipated that any such showing would be based on an analytical demonstration that: (1) Meteorological conditions in the area of the monitoring site were conducive to ozone formation during the period of clean data or during the alternative base period design value used for projections; (2) ozone concentrations have been trending downward at the site since 2011 (and ozone precursor emissions of NO_X and VOC have also decreased); and (3) emissions are expected to continue to decline in the upwind and downwind states out to the attainment date of the receptor. EPA evaluated state's analyses and found no state successfully applied these criteria to justify the use of one of these alternative approaches. The air quality data and projections in Section III indicate that trends in historic measured data do not necessarily support adopting a less stringent approach for identifying maintenance receptors for purposes of the 2015 ozone NAAQS. In fact, as explained in Section III, the EPA has found in its analysis for this final action that, in general, recent measured data from regulatory ambient air quality ozone monitoring sites suggest a number of receptors with elevated ozone levels will persist in 2023 even though our traditional methodology at Step 1 did not identify these monitoring sites as receptors in 2023. Thus, the EPA is not acting inconsistently with that memorandum—the factual conditions that would need to exist for the suggested approaches of that memorandum to be applicable have not been demonstrated as being applicable or appropriate based on the relevant data.

We further respond to comments related to the identification of receptors at Step 1 the RTC document.

4. Step 2: Technical Merits of a 1 Percent of the NAAQS Contribution Threshold

Comment: Several comments contend that for technical reasons, the 0.70 ppb threshold is inappropriate for determining whether a state is linked to a downwind receptor at Step 2 of the 4-step interstate transport framework. Comments state that the degree to which errors exist in modeling ozone concentrations and contributions make it inappropriate for a threshold as low as 0.70 ppb to be used. Some comments further state that the 0.70 ppb threshold is inappropriate because the concentration threshold is lower than what monitoring devices are capable of detecting. Comments reference the reported precision of Federal reference monitors for ozone and the rounding requirements found in 40 CFR part 50, appendix U, Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone, for support. Comments note that the 1 percent contribution threshold of 0.70 ppb is lower than the manufacturer's reported precision of Federal reference monitors for ozone and that the requirements found in appendix U truncates monitor values of 0.70 ppb to 0 ppb.

EPA Response: The EPA disagrees that a 1 percent of the NAAQS contribution threshold at Step 2 is ''inappropriate'' for the 2015 ozone NAAQS due to modeling biases and errors. The explanation for how the 1 percent contribution threshold was originally derived is available in the 2011 CSAPR rulemaking. *See* 76 FR 48208, 48236–38 (Aug. 8, 2011). The EPA has effectively applied a 1 percent of the NAAQS threshold to identify linked upwind states in three prior FIP rulemakings and numerous state-specific actions. The D.C. Circuit has declined to establish bright line criteria for model performance. In upholding the EPA's approach to evaluating interstate transport in CSAPR, the D.C. Circuit held that it would not ''invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world. That possibility is inherent in the enterprise of prediction.'' *EME Homer City II,* 795 F.3d at 135. The court continued to note that ''the fact that a 'model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable.' '' *Id.* at 135–36 (quoting *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (DC Cir. 1994). *See also Sierra Club* v. *EPA,* 939 F.3d 649, 686–87 (5th Cir. 2019) (upholding the EPA's modeling in the face of complaints regarding an alleged ''margin of error,'' noting challengers face a ''considerable burden'' in overcoming a ''presumption of regularity'' afforded ''the EPA's choice of analytical methodology'') (citing *BCCA Appeal Grp.* v. *EPA,* 355 F.3d 817, 832 (5th Cir. 2003)).

Furthermore, it is not appropriate to compare the bias/error involved in the estimation of total ozone to the potential error in the estimation of the subset of ozone that is contributed by a single state.[305] For example, on a specific day

and the real world. That possibility is inherent in the enterprise of prediction.'').

[304] Nor in the course of this evaluation has the EPA uniformly ruled out the concepts in Attachment A. For example, we noted at proposal that California's identification of a flexibility in Attachment A related to excluding certain air quality data associated with atypical events may be generally consistent with the EPA's modeling guidance, but this does not affect the ultimate determination that California's SIP is not approvable. *See* 87 FR 31454.

[305] See, *e.g.,* 87 FR 9798 at 9816.

the modeled versus monitored ozone value may differ by 2 ppb but that is a relatively small percentage of the total modeled ozone, which for a receptor of interest would be on the order of 70 ppb. It would be unrealistic to assign all of the 2 ppb discrepancy in the earlier example to the estimated impact from a single state because the 2 ppb error would be the combination of the error from all sources of ozone that contribute to the total, including estimated impacts from other states, the home state of the receptor, and natural background emissions.

To address comments that compare the 0.70 ppb threshold to the Federal reference monitors for ozone and the rounding requirements found in 40 CFR part 50, appendix U, the EPA notes that the comment is mistaken in applying criteria related to the precision of monitoring data to the modeling methodology by which we project contributions when quantifying and evaluating interstate transport at Step 2. Indeed, contributions by source or state cannot be derived from the total ambient concentration of ozone at a monitor at all but must be apportioned through modeling. Under our longstanding methodology for doing so, the contribution values identified from upwind states are based on a robust assessment of the average impact of each upwind state's ozone-precursor emissions over a range of scenarios, as explained in the Final Action AQM TSD. This analysis is in no way connected with or dependent on monitoring instruments' precision of measurement. *See EME Homer City II,* 795 F.3d 118, 135–36 (''[A] model is meant to simplify reality in order to make it tractable.'').

5. Step 2: Justification of a 1 Percent of the NAAQS Contribution Threshold

Comment: Comments contend that the EPA has not provided enough basis for reliance on the 0.70 ppb threshold, claiming that its use is therefore arbitrary and capricious.

EPA Response: The EPA is finalizing its proposed approach of consistently using a 1 percent of the NAAQS contribution threshold at Step 2. This approach ensures both national consistency across all states and consistency and continuity with our prior interstate transport actions for other NAAQS. Comments have not established that this approach is either unlawful or arbitrary and capricious.

The 1 percent threshold is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update and revised CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent to be an appropriate threshold. For ozone, as the EPA found in the CAIR, CSAPR, and CSAPR Update, a portion of the nonattainment and maintenance problems in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and other sources. The EPA's analysis shows that much of the ozone transport problem being analyzed for purposes of evaluating 2015 ozone NAAQS SIP obligations is still the result of the collective impacts of contributions from many upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Where a great number of geographically dispersed emissions sources contribute to a downwind air quality problem, which is the case for ozone, EPA believes that, in the context of CAA section 110(a)(2)(D)(i)(I), a state-level threshold of 1 percent of the NAAQS is a reasonably small enough value to identify only the greater-than-de minimis contributers yet is not so large that it unfairly focuses attention for further action only on the largest single or few upwind contributers. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR 74504, 74518. *See also* 86 FR 23054, 23085 (reviewing and explaining rationale from CSAPR, 76 FR 48208, 48236–38, for selection of 1 percent threshold).

Further, the EPA notes that the role of the Step 2 threshold is limited and just one step in the 4-Step interstate transport framework. It serves to screen in states for further evaluation of emissions control opportunities applying a multifactor analysis at Step 3. Thus, as the Supreme Court has recognized, the contribution threshold essentially functions to exclude states with ''de minimis'' impacts. *EME Homer City,* 572 U.S. at 500.

Comment: Commenters contend that the EPA cannot use the 1 percent threshold as a determination for significance.

EPA Response: To clarify, the EPA does not use the 1 percent of the NAAQS threshold as the definition of ''significance.'' Rather, where a state's contribution equals or exceeds the 1 percent of the NAAQS threshold, the EPA expects states to further evaluate their emissions to determine whether their emissions constitute significant contribution or interference with maintenance. The contribution threshold is a screening threshold to identify states which may be ''contributing'' to an out of state receptor. The EPA has maintained this interpretation of the relevant statutory language across many rulemakings, though commenters continue to confuse the Step 2 threshold with a determination of ''significance,'' which it is not. *See EME Homer City,* 572 U.S. at 500–502 (explaining the difference between the ''screening'' analysis at Steps 1 and 2 whereby the EPA ''excluded as de minimis any upwind State that contributed less than one percent of the . . . NAAQS'' and the ''control'' analysis at Step 3 whereby the EPA determined ''cost thresholds'' to define significance).

Further, the EPA's air quality and contribution modeling for ozone transport is based on application of the model in a relative sense rather than relying upon absolute model predictions. All models have limitations resulting from uncertainties in inputs and scientific formulation. To minimize the effects of these uncertainties, the modeling is anchored to base period measured data in the EPA's guidance approach for projecting design values. Notably, the EPA also uses our source apportionment modeling in a relative sense when calculating the average contribution metric (used to identify linkages). In this method the magnitude of the contribution metric is tied to the magnitude of the projected average design value which is tied to the base period average measured design value. The EPA's guidance has recommended against applying bright-line criteria for judging whether statistical measures of model performance constitute acceptable or unacceptable model performance.

The Agency continues to find that this method using the CAMx model to evaluate contributions from upwind states to downwind areas is reliable. The agency has used CAMx routinely in previous notice and comment transport rulemakings to evaluate contributions relative to the 1 percent threshold for both ozone and $PM_{2.5}$. In fact, in the original CSAPR, the EPA found that ''[t]here was wide support from commenters for the use of CAMx as an

appropriate, state-of-the science air quality tool for use in the [Cross-State Air Pollution] Rule. There were no comments that suggested that the EPA should use an alternative model for quantifying interstate transport.'' 76 FR 48229 (August 8, 2011). In this action, the EPA has taken a number of steps based on comments and new information to ensure to the greatest extent the accuracy and reliability of its modeling projections at Step 1 and 2, as discussed elsewhere in this document.

6. Step 2: Prevention of Significant Deterioration Significant Impact Levels

Comment: Several comments insist that when identifying an appropriate linkage threshold at Step 2 of the 4-step framework, the EPA should consider or rely on the 1 ppb significant impact level (SIL) for ozone used as part of the prevention of significant deterioration PSD permitting process. Comments reference the EPA's April 17, 2018, guidance memorandum, ''Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program'' (SIL guidance), as well as the EPA's March 2018 memorandum's Attachment A flexibilities to lend support to their opinion that the 1 ppb SIL should also be used to determine linkages at Step 2.

EPA Response: The EPA's SIL guidance relates to a different provision of the Clean Air Act regarding implementation of the prevention of significant deterioration (PSD) permitting program. This program applies in areas that have been designated attainment of the NAAQS and is intended to ensure that such areas remain in attainment even if emissions were to increase as a result of new sources or major modifications to existing sources located in those areas. This purpose is different than the purpose of the good neighbor provision, which is to assist downwind areas (in some cases hundreds or thousands of miles away) in resolving ongoing nonattainment of the NAAQS or difficulty maintaining the NAAQS through eliminating the emissions from other states that are significantly contributing to those problems. In addition, as discussed earlier, the purpose of the Step 2 threshold within the EPA's interstate transport framework for ozone is to broadly sweep in all states contributing to identified receptors above a de minimis level in recognition of the collective-contribution problem associated with regional-scale ozone transport. The threshold used in the context of PSD SIL serves an entirely different purpose, and so it does not follow that they should be made equivalent. Further, comments incorrectly associate the EPA's Step 2 contribution threshold with the identification of ''significant'' emissions (which does not occur until Step 3), and so it is not the case that the EPA is interpreting the same term differently.

The EPA has previously explained this distinction between the good neighbor framework and PSD SILs. *See* 70 FR 25162, 25190–25191 (May 12, 2005); 76 FR 48208, 48237 (August 8, 2011). Importantly, the implication of the PSD SIL threshold is not that single-source contribution below this level indicates the absence of a contribution or that no emissions control requirements are warranted. Rather, the PSD SIL threshold addresses whether further, more comprehensive, multi-source review or analysis of air quality impacts are required of the source to support a demonstration that it meets the criteria for a permit. A source with estimated impacts below the PSD SIL may use this to demonstrate that it will not cause or contribute (as those terms are used within the PSD program) to a violation of an ambient air quality standard, but is still subject to meeting applicable control requirements, including best available control technology, designed to moderate the source's impact on air quality.

Moreover, other aspects of the technical methodology in the SIL guidance compared to the good neighbor framework make a direct comparison between these two values misleading. For instance, in PSD permit modeling using a single year of meteorology the maximum single-day 8-hour contribution is evaluated with respect to the SIL. The purpose of the contribution threshold at Step 2 of the 4-step good neighbor framework is to determine whether the average contribution from a collection of sources in a state is small enough not to warrant any additional control for the purpose of mitigating interstate transport, even if that control were highly cost effective. Using a 1 percent of the NAAQS threshold is more appropriate for evaluating multi-day average contributions from upwind states than a 1 ppb threshold applied for a single day, since that lower value of 1 percent of the NAAQS will capture variations in contribution. If EPA were to use a single day reflecting the maximum amount of contribution from an upwind state to determine whether a linkage exists at Step 2, comments' arguments for use of the PSD SIL might have more force. However, that would likely cause more states to become linked, not less. And in any case, consistent with the method in our modeling guidance for projecting future attainment/nonattainment, the good neighbor methodology of using multiple days provides a more robust approach to establishing that a linkage exists at the state level than relying on a single day of data.

7. Step 2: August 2018 Memorandum

Comment: Comments assert that in the August 2018 memorandum the EPA committed itself to approving SIP submissions from states with contributions below 1 ppb, and so now the EPA should or must approve the good neighbor SIP submission from any state with a contribution below 1 ppb, either based on modeling available at the time of the state's SIP submission or at any time.

EPA Response: These comments mischaracterize the content and the EPA's application of August 2018 memorandum. Further, the EPA disputes that the EPA misled states or that the EPA has not appropriately reviewed SIP submissions from states that attempted to rely on an alternative contribution threshold at Step 2.

Specifically, the EPA's August 2018 memorandum provided an analysis regarding ''the degree to which certain air quality threshold amounts capture the collective amount of upwind contribution from upwind states.'' [306] It interpreted ''that information to make recommendations about what thresholds *may* be appropriate for use in'' SIP submissions (emphasis added).[307] Specifically, the August 2018 memorandum said, ''Because the amount of upwind collective contribution capture with the 1 percent and the 1 ppb thresholds is generally comparable, overall, we believe it *may* be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.'' (emphasis added).[308] Thus, the text of the August 2018 memorandum does not guarantee that any state with a contribution below 1 ppb has an automatically approvable good neighbor SIP. In fact, the August 2018 memorandum indicated that ''[f]ollowing these recommendations does not ensure that EPA will approve a SIP revision in all instances where the recommendations are followed, as the guidance may not apply to the facts and circumstances underlying a particular SIP. Final decisions by the EPA to approve a particular SIP revision will

[306] August 2018 memorandum, page 1.

[307] August 2018 memorandum, page 1.

[308] August 2018 memorandum, page 4.

only be made based on the requirements of the statute and will only be made following an air agency's final submission of the SIP revision to the EPA, and after appropriate notice and opportunity for public review and comment.'' [309] The August 2018 memorandum also stated, ''EPA and air agencies should consider whether the recommendations in this guidance are appropriate for each situation.'' [310] The EPA's assessment of every SIP submission that invoked the August 2018 memorandum considered the particular arguments raised by the state.[311]

Comment: Some comments allege that the EPA representatives led the states to believe that their SIP submission would be approved on the basis of a 1 ppb contribution threshold. The comments further claim that the EPA has now since reversed course on its August 2018 memorandum and imposed new requirements on states that were not included in the EPA's guidance. One comment suggested EPA switched position without explanation from the August 2018 guidance to its proposed disapprovals, which it viewed as unlawful under *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. 502 (2009).

EPA Response: As an initial matter, we note that the salience of these comments is limited to only a handful of states. The August 2018 memorandum made clear that the Agency had substantial doubts that any threshold greater than 1 ppb (such as 2 ppb) would be acceptable, and the Agency is affirming that a threshold higher than 1 ppb would not be justified under any circumstance for purposes of this action. No comment provided a credible basis for using a threshold even higher than 1 ppb. So this issue is primarily limited to the difference between a 0.70 ppb threshold and a 1.0 ppb threshold. Therefore, we note that this issue is only relevant to a small number of states whose only contributions to any receptor are above 1 percent of the NAAQS but lower than 1 ppb. Under the 2016v3 modeling of 2023 being used in this final action, those states with contributions that fall between 0.70 ppb and 1 ppb included in this action are Alabama, Kentucky, and Minnesota.

The EPA disagrees with comments' claims that the Agency has reversed course on applying the August 2018 memorandum. In line with the memorandum, the EPA evaluated every justification put forward by every state covered by this SIP disapproval action that attempted to justify an alternative threshold under the August 2018 memorandum, which are Alabama,[312] Arkansas,[313] Illinois,[314] Indiana,[315] Kentucky,[316] Louisiana,[317] Michigan,[318] Mississippi,[319] Missouri,[320] and Oklahoma,[321] and Utah.[322] The EPA also addressed criticisms of the 1 percent of the NAAQS contribution threshold made by Ohio [323] and Nevada.[324] (The topic of the EPA's input during state's SIP-development processes is further discussed in the RTC document.)

For this reason, the EPA disagrees with comment that case law reviewing changes in agency positions as articulated in *FCC* v. *Fox TV Stations, Inc.,* is applicable to this action. The Agency has not imposed a requirement that states must use a 1 percent of the NAAQS threshold (which would reflect a change in position from the August 2018 memorandum). Rather, under the terms of the August 2018 memorandum, the Agency has found that Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, Ohio, Oklahoma, and Utah have not made a sufficient showing that the use of an alternative contribution threshold is justified for those States. Even if it were found that the Agency's position had fundamentally changed between this rulemaking action and the August 2018 memorandum (which we do not concede to be the case), we do not believe that any state had a legitimate reliance interest that would be sufficient to overcome the countervailing public interest that is served in declining to approve a state's use of the 1 ppb threshold where the state did not have adequate technical justification. First, neither states nor the emissions sources located in those states have incurred any compliance costs based on the August 2018 memorandum. Second, it is not clear that any states invested much of their own public resources in developing state-specific arguments in support of a 1 ppb threshold. As the EPA observed at proposal, in nearly all submittals, the states did not provide the EPA with analysis specific to their state or the receptors to which its emissions are potentially linked. In one case, the EPA's proposed approval of Iowa's SIP submittal, ''*the EPA expended its own resources to attempt to supplement the information submitted by the state,* in order to more thoroughly evaluate the state-specific circumstances that could support approval.'' E.g., 87 FR 9806–07 (emphasis added). The EPA emphasizes again that it was the EPA's sole discretion to perform this analysis in support of the state's submittal, and the Agency is not obligated to conduct supplemental analysis to fill the gaps whenever it believes a state's analysis is insufficient. *Id.*

We acknowledge that certain states may have assumed the EPA would approve SIP submissions from states whose contribution to any receptor was below 1 ppb, but that assumption reflected a misunderstanding of the August 2018 memorandum, and in any case, an assumption is not, as a legal matter, the same thing as a reliance interest.

The EPA is not formally rescinding the August 2018 memorandum in this action or at this time, but since guidance memoranda are not binding in the first place, it is not required that agencies must ''rescind'' a guidance the moment it becomes outdated or called into question. As the Agency made clear in the August 2018 memorandum, all of EPA's proposals for action on interstate transport SIP submissions are subject to rulemaking procedure, including public notice and comment, before the EPA makes a final decision.

Although the EPA is not formally revoking the August 2018 memorandum at this time, and we have separately found that no state successfully established a basis for use of a 1 ppb threshold, we also continue to believe, as set forth in our proposed disapprovals, that national ozone transport policy associated with addressing obligations for the 2015 ozone NAAQS is not well-served by allowing for less protective thresholds at Step 2. Furthermore, the EPA disagrees that national consistency is an inappropriate consideration in the context of interstate ozone transport. The Good Neighbor provision, CAA section 110(a)(2)(D)(i)(I), requires to a unique degree of concern for consistency, parity, and equity across

[309] August 2018 memorandum, page 1.

[310] August 2018 memorandum, page 1.

[311] 87 FR 64423–64424 (Alabama); 87 FR 9806–9807 (Arkansas); 87 FR 9852–9853 (Illinois); 87 FR 9855–9856 (Indiana); 87 FR 9508–9511 (Kentucky); 87 FR 9812–9813 (Louisiana); 87 FR 9861–9862 (Michigan); 87 FR 9557 (Mississippi); 87 FR 9541–9543 (Missouri); 87 FR 31492 (Nevada); 87 FR 9870–9871 (Ohio); 87 FR 9818–9820 (Oklahoma); 87 FR 31477–31451 (Utah).

[312] 87 FR 64423–64424.

[313] 87 FR 9806–9807.

[314] 87 FR 9852–9853.

[315] 87 FR 9855–9856.

[316] 87 FR 9508–9511.

[317] 87 FR 9812–9813.

[318] 87 FR 9861–9862.

[319] 87 FR 9557.

[320] 87 FR 9541–9543.

[321] 87 FR 9818–9820.

[322] 87 FR 31477–31451.

[323] 87 FR 9870–9871.

[324] 87 FR 31492.

state lines.[325] For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on the EPA's review of good neighbor SIP submissions to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency now believes the attempted use of different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical implementation concerns. The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's SIP submission at Step 2 of the 4-step interstate transport framework. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. While alternative thresholds for purposes of Step 2 may be ''similar'' in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emissions controls while other states with a similar level of contribution would proceed to a Step 3 analysis. This can create significant equity and consistency problems among states.

One comment suggested that the EPA could address this potentially inequitable outcome by simply adopting a 1 ppb contribution threshold for all states. However, the August 2018 memorandum did not conclude that 1 ppb would be appropriate for all states, and the EPA does not view that conclusion to be supported at present. The EPA recognized in the August 2018 memorandum that on a nationwide basis there was some similarity in the amount of total upwind contribution captured between 1 percent and 1 ppb. However, while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold for every state. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (*e.g.,* roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum; in the EPA's 2016v2 and 2016v3 modeling, the amount lost is 5 percent). Further, this logic has no end point. A similar observation could be made with respect to any incremental change. For example, should the EPA next recognize a 1.2 ppb threshold because that would only cause some small additional loss in capture of upwind state contribution as compared to 1 ppb? If the only basis for moving to a 1 ppb threshold is that it captures a ''similar'' (but actually smaller) amount of upwind contribution, then there is no basis for moving to that threshold at all. Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference with maintenance of the NAAQS in other states as well as the broad, regional nature of the collective contribution problem with respect to ozone, we continue to find no compelling policy reason to adopt a new threshold for all states of 1 ppb.

It also is unclear why use of a 1 ppb threshold would be appropriate for all states under a more protective NAAQS when a 1 percent of the NAAQS contribution threshold has been used for less protective NAAQS. To illustrate, a state contributing greater than 0.75 ppb but less than 1 ppb to a receptor under the 2008 ozone NAAQS was ''linked'' at Step 2 using the 1 percent of the NAAQS contribution threshold, but if a 1 ppb threshold were used for the 2015 ozone NAAQS, then that same state would not be ''linked'' to a receptor at Step 2 under a NAAQS that is set to be more protective of human health and the environment. Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less protective ozone NAAQS), is an important consideration. Continuing to use a 1 percent of NAAQS approach ensures that if the NAAQS are revised and made more protective, an appropriate increase in stringency at Step 2 occurs, to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport obligations. *See* 76 FR 48208, 48237–38.

One comment identified that if the EPA were to use a 1 percent of the NAAQS contribution threshold, the EPA would be obligated to seek feedback on that contribution threshold through a public notice and comment process. The EPA's basis and rationale for every SIP submission covered by this final SIP disapproval action, including the use of a 1 percent of the NAAQS contribution threshold, was in fact presented for public comment. The EPA received, and is addressing in this action, many detailed comments about contribution thresholds. Further, the EPA's application of a 1 percent of the NAAQS threshold has been consistently used in notice-and-comment rulemakings beginning with the CSAPR rulemaking in 2010–2011 and including both FIP actions (CSAPR Update and Revised CSAPR Update) and numerous actions on ozone transport SIP submissions. In each case, the 1 percent of the NAAQS threshold was subject to rigorous vetting through public comment and the Agency's response to those comments, including through analytical evaluations of alternative thresholds. *See, e.g.,* 81 FR 74518–19. By contrast, the August 2018 memorandum was not issued through notice-and-comment rulemaking procedures, and the EPA was careful to caveat its utility and ultimate reliability for that reason.

Comment: Some comments claim that the EPA is applying the August 2018 memorandum inconsistently based on the EPA's actions with regard to action good neighbor SIP submissions from Iowa and Oregon for the 2015 ozone NAAQS and Arizona's good neighbor SIP submission for the 2008 ozone NAAQS.

EPA Response: The EPA disagrees that there is any such inconsistency. The EPA withdrew a previously proposed approval of Iowa's SIP submission where the Agency had attempted to substantiate the use of a 1 ppb contribution threshold, and re-proposed and finalized approval of that SIP based on a different rationale using a 1 percent of the NAAQS contribution threshold. 87 FR 9477 (Feb. 22, 2022); 87 FR 22463 (April 15, 2022). As explained earlier in this section, this experience of the EPA attempting to justify 1 ppb for a state through additional air quality analysis, where the state had not conducted an analysis the Agency considered to be sufficient is part of the reason the Agency is moving away from attempting to justify use of this alternative contribution threshold.

The EPA also disputes the claim that Oregon and Arizona were the only states ''allowed'' to use a 1 ppb threshold. The EPA approved Oregon's SIP submission for the 2015 ozone NAAQS on May 17,

[325] The EPA notes that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

2019, and both Oregon and the EPA relied on a 1 percent of the NAAQS contribution threshold. 84 FR 7854, 7856 (March 5, 2019) (proposal); 84 FR 22376 (May 17, 2019) (final). In our FIP proposal for the 2015 ozone NAAQS, the EPA explained it was not proposing to conduct an error correction for Oregon even though updated modeling indicated Oregon contributed above 1 percent of the NAAQS to monitors in California, because the specific monitors in California are not interstate ozone transport ''receptors'' at Step 1. *See* 87 FR 20036, 20074–20075 (April 6, 2022). The EPA solicited public comment on its approach to Oregon's contribution to California receptors as part of the 2015 ozone NAAQS transport FIP development, and the Agency has not yet taken final action on that FIP. In 2016, the EPA previously approved Arizona's good neighbor SIP for the earlier 2008 ozone NAAQS based on a similar rationale with regard to certain monitors in California in 2016. 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule). The Agency's view with respect to its evaluation of both Arizona and Oregon is that specific monitors in California are not interstate ozone transport ''receptors'' at Step 1. The EPA has not approved or applied an alternative Step 2 threshold for any state.

Comments related to the specific circumstances of an individual state and/or its arguments put forth in its SIP submission as it pertains to the August 2018 Memorandum are further addressed in the RTC document.

8. Step 3: States' Step 3 Analyses for the 2015 Ozone NAAQS

Comment: Comments state that the EPA has not provided any guidance on what an appropriate Step 3 analysis would entail, and therefore any decision where the Agency rejects a Step 3 analysis is arbitrary and capricious. One comment claims that not a single state has successfully made a Step 3 demonstration leading to an approvable interstate transport SIP for the 2015 ozone NAAQS. Comments note that there is no requirement in the CAA that states must complete an analysis similar to the EPA's, and the EPA cannot substitute its own judgment for that of the state's in crafting a SIP. Rather, the EPA is obligated to defer to state choices. One comment asserts that the EPA is required to interpret the term ''significant contribution'' in a manner ''which ties contribution to an amount which contributes significantly to downwind maintenance or nonattainment problems.'' Another comment claims the EPA is intentionally exploiting the Supreme Court decision in *EME Homer City* to justify any requirements it deems necessary to further Federal policy decisions. Some comments identify that some states did not conduct a Step 3 analysis in their submitted SIPs because, using the flexibilities provided in the 2018 memoranda, these states concluded in Step 1 and Step 2 that no controls were required. One comment suggests that the EPA propose an 18-month period to allow these states to proceed with Steps 3 and 4.

EPA Response: The EPA disagrees that it is obligated to defer to states' choices in the development of good neighbor SIP submissions. As required by the Act, the EPA has evaluated each of the SIP submissions for compliance with the CAA, including whether an adequate Step 3 analysis was conducted—or whether states had offered an approvable alternative approach to evaluating their good neighbor obligations—and found in each case that what these states submitted was not approvable. The Supreme Court has recognized that the EPA is not obligated to provide states with guidance before taking action to disapprove a SIP submission. *EME Homer City,* 572 U.S. at 508–10. Nonetheless, throughout the entire history of the EPA's actions to implement the good neighbor provision for ozone, starting with the 1998 NO_X SIP Call, we have consistently adopted a similar approach at Step 3 that evaluates emissions reduction opportunities for linked states applying a multifactor analysis. States could have performed a similar analysis of emissions control opportunities. The EPA has not directed states that they must conduct a Step 3 analysis in precisely the manner the EPA has done in its prior regional transport rulemakings; however, SIPs addressing the obligations in CAA section 110(a)(2)(D)(i)(I) must prohibit ''any source or other type of emissions activity within the State'' from emitting air pollutants which will contribute significantly to downwind air quality problems. Thus, States seeking to rely on an alternative approach to defining ''significance'' must use an approach that comports with the statute's objectives to determine whether and to what degree emissions from a state should be ''prohibited'' to eliminate emissions that will ''contribute significantly to nonattainment in, or interfere with maintenance of'' the NAAQS in any other state. Further, the approach selected must be reasonable and technically justified. Therefore, while the EPA does not direct states to use a particular framework, nonetheless, each state must show that its decision-making was based on a ''technically appropriate or justifiable'' evaluation.

Further, the Agency has a statutory obligation to review and approve or disapprove SIP submittals according to the requirements of the Clean Air Act. *See* CAA section 110(k)(3). And the Agency is empowered to interpret those statutory requirements and exercise both technical and policy judgment in acting on SIP submissions. Indeed, the task of allocating responsibility for interstate pollution particularly necessitates Federal involvement. *See EME Homer City,* 572 U.S. at 514 (''The statute . . . calls upon the Agency to address a thorny causation problem: How should EPA allocate among multiple contributing upwind States responsibility for a downwind State's excess pollution?''); *see also Wisconsin,* 938 F.3d at 320. Further, we have consistently disapproved states' good neighbor SIP submissions addressing prior ozone NAAQS when we have found those states linked through our air quality modeling and yet the state failed to conduct an analysis of emissions control opportunities, or such analysis was perfunctory or otherwise unsatisfactory. We have been upheld in our judgment that such SIPs are not approvable. *See Westar Energy* v. *EPA,* 608 Fed. App'x 1, 3 (DC Cir. 2015) (''EPA acted *well within the bounds* of its delegated authority when it disapproved of Kansas's proposed SIP.'') (emphasis added).

With respect to the assertion that no state has successfully avoided a FIP with an approvable Step 3 analysis, we note first that at this time, no final FIP addressing the 2015 ozone NAAQS has been promulgated. More directly to the point, no state submission that is the subject of this disapproval action offered any additional emissions control measures. While it is conceivable that a Step 3 analysis may result in a determination that no additional controls are needed, EPA expects that such circumstances will generally be rare, else the CAA's interstate transport provisions are rendered ineffective. For example, the EPA determined in the CSAPR Update that even though the District of Columbia and Delaware were linked to out of state receptors at Steps 1 and 2 of the 4-step interstate transport framework, no additional control measures were required of either jurisdiction. As to the District of Columbia, we found that there were no affected EGU sources that would fall under the CSAPR Update's control program. For Delaware, we found that

there were no emissions reductions available from any affected sources for any of the emissions control stringencies that were analyzed. *See* 81 FR 74504, 74553. No state's submission covered in this action contained an emissions control analysis that would allow for these types of conclusions to be reached for all of its sources.[326] States generally did not conduct any comparative analysis of available emissions control strategies—nor did they prohibit any additional ozone-precursor emissions.

We are unclear what another comment intends in asserting that the EPA is required to interpret ''significant contribution'' in a manner ''which ties contribution to an amount which contributes significantly to downwind maintenance or nonattainment problems.'' The EPA disagrees that: (1) It has imposed or mandated a specific approach to Step 3 in this action, (2) this action established a particular level of emissions reduction that states were required to achieve, or (3) it mandated a particular methodology for making such a determination. To the extent the comment suggests that the Agency cannot mandate that states use cost as a method of allocating responsibility in their transport SIPs, first, the Agency has not done so. Further, as to whether cost could be used as a permissible method of allocating responsibility, the comment ignores the Supreme Court's holding to the contrary in *EME Homer City,* 572 U.S. at 518, and the D.C. Circuit's earlier holding to the same effect in *Michigan,* 213 F.3d at 687–88, both of which upheld the EPA's approach of using uniform cost-effectiveness thresholds to allocate upwind state responsibilities under the good neighbor provision for prior NAAQS. While this approach may be reasonable to apply again for the 2015 ozone NAAQS (and the EPA has proposed to do so in the proposed FIP action published on April 6, 2022), the EPA did not impose such a requirement on states in developing SIP submissions, nor is the EPA finding any SIP submission not approvable based on a failure to use this particular methodology.

In its March 2018 memorandum, Attachment A, the Agency acknowledged that there could be multiple ways of conducting a Step 3 analysis. The Agency did not endorse any particular approach and noted the Attachment was merely a list of stakeholder ideas that the EPA was not recommending any state follow. The apparent result of this ''flexibility,'' however, was that no state presented a Step 3 analysis that resulted in including any enforceable emissions reductions to address good neighbor obligations for the 2015 ozone NAAQS in their interstate transport SIP submittals. Likewise, the comment here did not include information or analysis establishing that any particular alternative Step 3 approach should have been approved or that any state performed such an analysis in a manner that would have addressed ''significant contribution'' even in the manner the comment appears to be suggesting.

Notably, materials appended to one State's SIP submission, developed by the Midwest Ozone Group (MOG), did present an analysis applying an approach to ''significant contribution'' that was based on calculating a proportional share of each state's contribution to a downwind receptor, and this methodology would have imposed on that State's, Kentucky's, sources an obligation to eliminate 0.02 ppb of ozone at the relevant receptor. *See* 87 FR 9507. While the EPA does not endorse or here evaluate the merits of such an approach, it is noteworthy that the State in that instance did not adopt that approach, did not impose that obligation on its sources through enforceable measures by revising its SIP, and offered no explanation for its decision not to do so. *See id.* 9516 (''This approach would have imposed additional emissions reductions for Kentucky sources. Kentucky's final SIP did not consider MOG's proposal and did not provide an explanation for why it was rejecting this approach to allocating upwind emissions reductions, even though it appended this recommendation to its SIP submittal.'').

9. Step 4: Attempt To Rely on FIPs in a SIP Submission

Comment: One comment states that FIPs or other Federal emissions control measures do not have to be incorporated into and enforceable under state law to be an approvable SIP measure. They view it as acceptable for a state to rely in its SIP Submission on the emissions reductions achieved by prior ozone transport FIPs, such as the CSAPR Update or the Revised CSAPR Update, as a permissible means of achieving emissions reductions to eliminate significant contribution for the 2015 ozone NAAQS.

EPA Response: The EPA disagrees. As the EPA has noted on page 16 of our September 2013 memorandum ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)'' (2013 Infrastructure SIP Guidance): ''a FIP is not a state plan and thus cannot serve to satisfy the state's obligation to submit a SIP.'' [327] Indeed, the general principle that measures relied on to meet states' CAA obligations must be part of the SIP has been recognized by courts, such as in *Committee for a Better Arvin,* 786 F.3d 1169 (9th Cir. 2015).

This principle is grounded in the recognition that if such measures are not rendered enforceable within the SIP itself, then they may be modified or amended in ways that would undermine the basis for the state's reliance on them, while the approved SIP itself would purport to have addressed the relevant obligation merely by outdated reference to that modified or nonexistent control measure residing outside the SIP. For example, to be credited for attainment demonstration purposes, requirements that may otherwise be federally enforceable (such as new source review permit limits or terms in federally enforceable consent orders), must be in the state's implementation plan so that they could not later be changed without being subject to the EPA's approval. This principle is instrumental to ensuring that states cannot take credit for control measures that might be changed (even by the EPA itself) without the EPA's required approval action under CAA section 110, which includes the obligation to ensure there is no interference or backsliding with respect to all applicable CAA requirements. *See* CAA section 110(l). *See also Montana Sulfur and Chemical Co.* v. *EPA,* 666 F.3d 1174, 1195–96 (9th Cir. 2012) (''The EPA correctly reads 42 U.S.C. 7410(a)(2) as requiring states to include enforceable emissions limits and other control measures *in the plan itself.*'') (emphasis in original); 40 CFR 51.112(a) (''Each plan must demonstrate that the measures, rules, and regulations *contained in it* are adequate to provide for the timely attainment and

[326] We note that California's SIP submission is not approvable at Step 3, despite the fact that the EPA has not identified NO_X emissions control opportunities at the state's EGUs. Nonetheless, the SIP submission is not approvable because the state attempted to rely on the CSAPR Update cost threshold to justify a no-control determination when that threshold was in relation to a partial remedy for a less protective NAAQS, and even if it could be reasonably concluded that no emissions reductions are appropriate at EGUs in California, the SIP submission did not conduct an adequate analysis of emissions control opportunities at its non-EGU industrial sources. *See* 87 FR 31459–60.

[327] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 13, 2013 (available at *https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf*).

maintenance of the national standard that it implements.'') (emphasis added).

The EPA has applied this same interpretation in implementing other infrastructure SIP requirements found in CAA section 110(a)(2). For example, in implementing CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the permitting program for PSD, the EPA has developed FIPs that incorporate by reference provisions codified at 40 CFR 51.21, and some states have taken delegation of that FIP to implement the relevant requirements. But the EPA does not and cannot approve the state as having met these infrastructure SIP elements, even by virtue of taking delegation of the FIP. *See, e.g.,* 83 FR 8818, 8820 (March 1, 2018). Likewise, under one of the pathways presented in our 2013 Infrastructure SIP Guidance, the EPA does not approve SIPs addressing interstate visibility transport obligations under CAA section 110(a)(2)(D)(i)(II) (''prong 4'') until the state itself has a fully approved regional haze plan, and states cannot rely on the CSAPR ''better than BART'' FIPs to meet their prong 4 requirements until they have replaced that FIP with an approved SIP. *See, e.g.,* 84 FR 13800, 13801 (April 8, 2019); 84 FR 43741, 43744 (Aug. 22, 2019).

The comment does not provide contrary examples where the EPA has approved, as a SIP-based emissions control program, requirements that are established through Federal regulation or other types of emissions control programs that are outside the SIP. It is true that in the first two steps of the 4-step interstate transport framework, the EPA conducts air quality modeling based on emissions inventories reflective of on-the-books state and Federal emissions control requirements, to make determinations about air quality conditions and contribution levels that can be anticipated *in the baseline* in a future analytic year. If the comment's examples were intended to reference this consideration of Federal measures in prior actions on SIP submittals, the EPA agrees that it does consider such measures at these steps of its analysis, and the EPA has consistently taken this approach throughout its prior ozone transport actions. But here we are discussing Step 3 and 4 of the framework, where states that have been found to contribute to downwind nonattainment and maintenance problems, *e.g.,* are linked at Steps 1 and 2 to an out of state receptor, would need to evaluate their continuing emissions to determine what if any of those emissions should be deemed ''significant'' (*e.g.,* Step 3) and eliminated through enforceable emissions control requirements (*e.g.,* Step 4). The EPA is not aware of any good neighbor SIP submission that it has approved where a state purported to eliminate its significant contribution (*e.g.,* satisfy Steps 3 and 4) simply by referring to Federal measures that were not included in its SIP and enforceable as a matter of state law. Finally, it bears emphasizing that the EPA's assessment of the 2015 ozone transport SIPs has already accounted for the emissions-reducing effects of both the CSAPR Update and the Revised CSAPR Update in its baseline air quality modeling at Steps 1 and 2, and so pointing to either of those rules as measures that would eliminate significant contribution at Step 3, for purposes of the 2015 ozone NAAQS, would be impermissible double-counting.

C. Good Neighbor Provision Policy

1. Mobile Source Emissions

Comment: Several comments assert that mobile source emissions within the home state of the location of receptors are the primary source of nonattainment problems in downwind areas. Some comments additionally state that a larger portion of their own upwind state emissions is from mobile source emissions. These comments request that the EPA focus on these emissions sources rather than stationary sources to reduce ongoing nonattainment problems. These comments claim mobile sources are federally regulated and, therefore, the EPA bears the responsibility to either take action to reduce mobile source emissions nationwide or encourage downwind states to implement strategies to reduce their own local mobile source emissions.

Response: The EPA recognizes that nationwide, mobile sources represent a large portion of ozone-precursor emissions and, as such, would be expected to have a large impact on nonattainment and maintenance receptors.

The EPA has been regulating mobile source emissions since it was established as a Federal agency in 1970 and is committed to continuing the effective implementation and enforcement of current mobile source emissions standards and evaluating the need for additional standards.[328] The EPA believes that the NO_X reductions from its Federal programs are an important reason for the historical and long-running trend of improving air quality in the United States. The trend helps explain why the overall number of receptors and severity of ozone nonattainment problems under the 1997 and 2008 ozone NAAQS have declined. As a result of this long history, NO_X emissions from onroad and nonroad mobile sources have substantially decreased and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the more recent and more stringent standards replace older vehicles and engines.[329]

The EPA included mobile source emissions in the 2016v2 modeling used to support the proposal of these SIP disapproval actions to help determine state linkages at Steps 1 and 2 of the 4-step interstate transport framework and has done likewise in its 2016v3 modeling. However, whether mobile source emissions are a large portion of an upwind or downwind state's NO_X emissions, and whether they represent a large portion of the contribution to downwind nonattainment and maintenance receptors, does not answer the question regarding the adequacy of an upwind state's SIP submission. The question is whether ''any source or other type of emissions activity'' (in the collective) in an upwind state is contributing significantly to downwind receptors, *see* CAA section 110(a)(2)(D)(i). A state's transport SIP must include a technical and adequate justification to support its conclusion that the state has satisfied its interstate transport obligations for the 2015 ozone NAAQS.

To the extent that comments argue that mobile source emissions should be the focus of emissions reductions for the purposes of resolving interstate transport obligations, states could have provided such an analysis for how mobile source reductions might achieve necessary reductions. *See, e.g.,* 70 FR 25209. However, states conducted no such analysis of methods or control techniques that could be used to reduce mobile source emissions, instead claiming that states cannot control mobile source emissions, as this is a federally-regulated sector, or states cannot reasonably control these emissions. States do have options, however, to reduce emissions from certain aspects of their mobile source

[328] On December 20, 2022, the EPA finalized more stringent emissions standards for NO_X and other pollutants from heavy-duty vehicles and engines, beginning with model year 2027. *See https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-and-related-materials-control-air-pollution.* The EPA is also developing new multi-pollutant standards for light- and medium-duty vehicles as well as options to address pollution from locomotives.

[329] *https://gispub.epa.gov/air/trendsreport/2022/#home.*

sectors, and to the extent a state is attributing its contribution to out of state receptors to its mobile sources, it could have conducted an analysis of possible programs or measures that could achieve emissions reductions from those sources. (For example, a general list of types of transportation control measures can be found in CAA section 108(f).[330])

State-specific issues raised by comments are further addressed in the RTC document.

2. International Contributions

Comment: Several comments state that international emissions contribute to nonattainment and maintenance receptors downwind, and these emissions are not within the jurisdiction of the states. They advocate for the EPA should considering this when acting on SIP submissions. Some comments claim that, in the west, international contributions are even greater than in eastern portions of the U.S. and support their notion that the EPA's evaluation of interstate transport should take special consideration of unique regional factors when determining upwind state obligations, or that the Agency should otherwise explain why it is still inappropriate to factor in higher international contributions, as the Agency has done in Oregon's case.

Response: The EPA responded to similar arguments related to international emissions included in the SIP submissions of Arkansas, California, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Utah, Wyoming, and West Virginia in the proposed disapprovals.[331] No comments on the proposed disapprovals provided new information to indicate the EPA's initial assessment was incorrect. These comments' reasoning related to international emissions is inapplicable to the requirements of CAA section 110(a)(2)(D)(i)(I). The good neighbor provision requires states and the EPA to address interstate transport of air pollution that significantly contributes to downwind states' ability to attain and maintain the NAAQS. Whether emissions from other states or other countries also contribute to the same downwind air quality issue is typically not relevant in assessing whether a downwind state has an air quality problem, or whether an upwind state is significantly contributing to that problem. (Only in rare cases has EPA concluded that certain monitoring sites should not be considered receptors at Step 1 due to the very low collective upwind-state contribution at those receptors. *See* the RTC document.) States are not obligated under CAA section 110(a)(2)(D)(i)(I) to act alone to reduce emissions in amounts sufficient to resolve a downwind receptor's nonattainment or maintenance problem. Rather, states are obligated to eliminate their own ''significant contribution'' to that receptor or ''interference'' with the ability of other states to attain or maintain the NAAQS. The statutory standard is, fundamentally, one of contribution, not causation.

Indeed, the D.C. Circuit in *Wisconsin* specifically rejected petitioner arguments suggesting that upwind states should be excused from good neighbor obligations on the basis that some other source of emissions (whether international or another upwind state) could be considered the ''but-for'' cause of downwind air quality problem. *See Wisconsin,* 938 F.3d at 323–324. The court viewed petitioners' arguments as essentially an argument ''that an upwind state 'contributes significantly' to downwind nonattainment only when its emissions are the sole cause of downwind nonattainment.'' *Id.* at 324. The court explained that ''an upwind state can 'contribute' to downwind nonattainment even if its emissions are not the but-for cause.'' *Id.* at 324–325. *See* also *Catawba County* v. *EPA,* 571 F.3d 20, 39 (DC Cir. 2009) (rejecting the argument ''that 'significantly contribute' unambiguously means 'strictly cause''' because there is ''no reason why the statute precludes EPA from determining that [an] addition of [pollutant] into the atmosphere is significant even though a nearby county's nonattainment problem would still persist in its absence''); *Miss. Comm'n on Envtl. Quality* v. *EPA,* 790 F.3d 138, 163 n.12 (DC Cir. 2015) (observing that the argument that ''there likely would have been no violation at all . . . if it were not for the emissions resulting from [another source]'' is ''merely a rephrasing of the but-for causation rule that we rejected in Catawba County''). Therefore, a state is not excused from eliminating its significant contribution on the basis that international emissions also contribute some amount of pollution to the same receptors to which the state is linked.

To the extent comments compare the influence of international emissions with the EPA's treatment of receptors in California to which Oregon contributes greater than 0.70 ppb, the EPA responds to these comments in the RTC document.

3. Western Interstate Transport Policy

Comment: Several comments argue that the EPA should consider an alternative approach to evaluating interstate transport in the western U.S. Comments assert there are considerations unique to the western states, such as increased background, international, and wildfire contributions to ozone concentrations in the west. Some commenters believe a ''case-by-case'' assessment is more appropriate for evaluating western states' interstate transport obligations, as they claim the EPA had done for the 2008 ozone standards. They additionally argue that the EPA modeling is not able to accurately project ozone concentrations in the west because of these factors, along with the west's unique topographical influence on ozone transport.

Response: The EPA disagrees that either its nationwide photochemical grid modeling or the 4-step interstate transport framework for ozone cannot generally be applied to states in the western region of the U.S. and has maintained that position consistently throughout numerous actions.[332] Though at times the EPA has found it appropriate to examine more closely discreet issues for some western states,[333] the 4-step interstate transport framework itself is appropriate for assessing good neighbor obligations of western states in the absence of those circumstances. The EPA evaluated the contents of the western states' SIP submissions covered by this action on the merits of the information the states provided. As described at proposal and reiterated in Section IV, the EPA is finalizing its disapproval of California,

[330] In making this observation, the EPA is not suggesting that mobile source emissions reductions are necessarily required to address a state's good neighbor obligations, but merely pointing out that if the state itself attributes the problem to mobile sources, then it is reasonable to expect that further analysis of such control strategies would be explored.

[331] 87 FR 9798, 9809–9810 (Feb. 22, 2022) (Arkansas); 87 FR 31443, 31460–31461 (May 24, 2022) (California); 87 FR 9854 (Illinois); 87 FR 9859–9860 (Indiana); 87 FR 9498, 9508 (Feb. 22, 2022) (Kentucky); 87 FR 9838, 9865 (Michigan); 87 FR 9533, 9543 (Feb. 22, 2022) (Missouri); 87 FR 9838 at 9874 (Ohio); 87 FR 31470, 31482 (May 24, 2022) (Utah); 87 FR 9516, 9527 (Feb. 22, 2022) (West Virginia); 87 FR 31495, 31507 (May 24, 2022) (Wyoming).

[332] For a discussion of this history, *see* for example 87 FR 31480–81 (proposed disapproval of Utah SIP submission) and 87 FR 31453–56 (proposed disapproval of California SIP submission).

[333] *See, e.g.,* Approval of Arizona's 2008 ozone NAAQS interstate transport SIP submission, 81 FR 15200 (March 22, 2016) (Step 1 analysis concluding certain monitors in California should not be considered interstate transport receptors for purposes of the good neighbor provision for the 2008 ozone NAAQS); *see also* 87 FR 61249, 61254–55 (Oct. 11, 2022) (in approving Colorado's interstate transport SIP for the 2015 ozone NAAQS, analyzing unique issues associated with wintertime inversion conditions in certain western areas).

Nevada, and Utah's SIP submissions. This final determination is based on these evaluations, as well as the EPA's 2016v2 and 2016v3 modeling following stakeholder feedback.

The EPA continues to find it appropriate to rely on the results of its nationwide modeling in the western U.S., despite comments concerning the ability for the EPA's modeling to accurately project ozone concentrations and contributions in western states, as well as its ability to support the EPA's 4-step framework for assessing interstate transport. The EPA's nationwide photochemical grid modeling considers multiple complex factors, including those raised in comments, such as terrain complexities, variability in emissions (*e.g.,* wildfire emissions), meteorology, and topography. While the EPA continues to believe its 2016v2 modeling performs equally as well in both the west and the east, the EPA has adjusted its 2016v3 modeling to ensure its predictions more closely replicate the relative magnitude of concentrations and day-to-day variability that are characteristic of observed 8-hour daily maximum ozone concentrations in each region, as explained in Section III.A and the RTC document. As such, the EPA continues to find its modeling reliable for characterizing ozone concentrations and contribution values in the western U.S. Further responses regarding the reliability of the EPA's modeling in the western U.S. is provided in the RTC document.

The EPA disagrees with comments noting that the Agency took an alternative approach for western states when assessing interstate transport obligations under the 2008 ozone NAAQS. As explained in our proposed disapproval of California's 2015 ozone NAAQS interstate transport SIP submission, while the EPA has in limited circumstances found unique issues associated with addressing ozone transport in western states, the EPA has consistently applied the 4-step interstate transport framework in western states, as it has done here, and has identified ozone transport problems in the west that are similar to those in the east.[334] [335] At proposal, the EPA addressed states' arguments regarding the impact of unique factors such as topography and, as part of the EPA's evaluation of the contents of the SIP submission, provided explanation as to why the EPA found the states' arguments did not support their conclusions regarding long range transport of ozone in the west.[336]

While comments point to relatively higher level of contributions from non-anthropogenic, local, or international contributions in the west as reason for evaluating interstate transport differently in the west, a state is not excused from eliminating its significant contribution due to contributions from these sources, where the data shows that anthropogenic emissions from upwind states also contribute collectively to identified receptors at levels that indicate there to be an interstate contribution problem as well. As stated in Section V.C.2, a state is not excused from eliminating its significant contribution on the basis that international emissions also contribute some amount of pollution to the same receptors to which the state is linked. This same principle applies broadly to other arguments as to which emissions are the ''cause'' of the problem; the good neighbor provision established a contribution standard, not a but-for causation standard. *See Wisconsin,* 938 F.3d at 323–25.

VI. Statutory and Executive Order Reviews

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

A. Executive Orders 12866: Regulatory Planning and 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 for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This finding relates to the requirement in the CAA for states to submit SIPs under CAA section 110(a)(2)(D)(i)(I) addressing interstate transport obligations associated with the 2015 ozone NAAQS.

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 action is disapproving SIP submissions for not containing the necessary provisions to satisfy interstate transport requirements under CAA section 110(a)(2)(D)(i)(I).

D. Unfunded Mandates Reform Act of 1995 (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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, this action does not impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action includes disapproving the portion of Oklahoma's SIP submission addressing the state's good neighbor obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS and applies to certain areas of Indian country as discussed in Section IV.C of the proposed action, ''Air Plan Disapproval; Arkansas, Louisiana, Oklahoma, and Texas; Interstate Transport of Air Pollution for the 2015 Ozone National Ambient Air Quality Standards'' (87 FR 9798 at 9824, February 2, 2022). However, this action does not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that

[334] 87 FR 31443, 31453.

[335] 81 FR 74503, 74523.

[336] *See, e.g.,* 87 FR 31443, 31457. The EPA evaluated California's qualitative consideration of unique topographic factors that may influence the transport of emissions from sources within the state to downwind receptors in Colorado and Arizona. The EPA concluded that the State's arguments do not present sufficient evidence that called into question the results of the EPA's modeling.

consultation is provided in the file ''2015 Ozone Transport OK Tribal Consultation Meeting Record 3–3–2022,'' in the docket for this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the 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 it merely disapproves SIP submissions as not containing the necessary provisions to satisfy interstate transport requirements under CAA section 110(a)(2)(D)(i)(I).

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)

This rulemaking does not involve technical standards.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. As articulated in this final action, the EPA is determining that certain SIPs do not meet certain minimum requirements, and the EPA is disapproving those SIPs. Specifically, this action disapproves certain SIP submissions as not containing the necessary provisions to satisfy ''good neighbor'' requirements under CAA section 110(a)(2)(D)(i)(I). The EPA did not perform an EJ analysis and did not consider EJ in this action. The CAA and applicable implementing regulations neither prohibit nor require such an evaluation. In a wholly separate regulatory action, the EPA will fully address the CAA ''good neighbor'' requirements under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS as it regards the SIP disapprovals included in this final action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).[337]

This rulemaking is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In this final action, the EPA is applying a uniform legal interpretation and common, nationwide analytical methods with respect to the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of pollution (*i.e.,* ''good neighbor'' requirements) to disapprove SIP submissions that fail to satisfy these requirements for the 2015 ozone NAAQS. Based on these analyses, the EPA is disapproving SIP submittals for the 2015 ozone NAAQS for 21 states located across a wide geographic area in eight of the ten EPA Regions and ten Federal judicial circuits. Given that on its face this action addresses implementation of the good neighbor requirements of CAA section 110(a)(2)(D)(i)(I) in a large number of states located across the country and given the interdependent nature of interstate pollution transport and the common core of knowledge and analysis involved in evaluating the submitted SIPs, this is a ''nationally applicable'' action within the meaning of CAA section 307(b)(1).

In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). In this final action, the EPA is interpreting and applying section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here the same, nationally consistent 4-step interstate transport framework for assessing obligations for the 2015 ozone NAAQS that it has applied in other nationally applicable rulemakings, such as CSAPR, the CSAPR Update, and the Revised CSAPR Update. The EPA is relying on the results from nationwide photochemical grid modeling using a 2016 base year and 2023 projection year as the primary basis for its assessment of air quality conditions and pollution contribution levels at Step 1 and Step 2 of that 4-step framework and applying a nationally uniform approach to the identification of nonattainment and

[337] In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

maintenance receptors across the entire geographic area covered by this final action.[338] The EPA has also evaluated each state's arguments for the use of alternative approaches or alternative sets of data with an eye to ensuring national consistency and avoiding inconsistent or inequitable results among upwind states (*i.e.,* those states for which good neighbor obligations are being evaluated in this action) and between upwind and downwind states (*i.e.,* those states that contain receptors signifying ozone nonattainment or maintenance problems).

The Administrator finds that this is a matter on which national uniformity in judicial resolution of any petitions for review is desirable, to take advantage of the D.C. Circuit's administrative law expertise, and to facilitate the orderly development of the basic law under the Act. The Administrator also finds that consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different states, and that a nationally consistent approach to the CAA's mandate concerning interstate transport of ozone pollution constitutes the best use of agency resources. The EPA's responses to comments on the appropriate venue for petitions for review are contained in the RTC document.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by April 14, 2023.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart B—Alabama

■ 2. Section 52.56 is added to read as follows:

§ 52.56 Control strategy: Ozone.

(a) The state implementation plan (SIP) revision submitted on June 21, 2022, addressing Clean Air Act section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2015 ozone national ambient air quality standards (NAAQS) is disapproved.

(b) [Reserved]

Subpart E—Arkansas

■ 3. Section 52.174 is amended by adding paragraph (b) to read as follows:

§ 52.174 Control strategy and regulations: Ozone.

* * * * *

(b) The portion of the SIP submittal from October 10, 2019, addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2015 ozone national ambient air quality standards (NAAQS) is disapproved.

Subpart F—California

■ 4. Section 52.223 is amended by adding paragraph (p)(7) to read as follows:

§ 52.223 Approval status.

* * * * *

(p) * * *

(7) The interstate transport requirements for Significant Contribution to Nonattainment (Prong 1) and Interstate Transport—Interference with Maintenance (Prong 2) of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I).

■ 5. Section 52.283 is amended by adding paragraph (h) to read as follows:

§ 52.283 Interstate Transport.

* * * * *

(h) *2015 ozone NAAQS.* The 2018 Infrastructure SIP Revision, submitted on October 1, 2018, does not meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i)(I) for the 2015 ozone national ambient air quality standards (NAAQS).

(1) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 2015 ozone NAAQS in any other State and interference with maintenance of the 2015 ozone NAAQS by any other State.

(2) [Reserved]

Subpart O—Illinois

■ 6. Section 52.720 is amended in the table in paragraph (e), under the heading ''Section 110(a)(2) Infrastructure Requirements,'' by revising the entry for ''2015 Ozone NAAQS Infrastructure Requirements'' to read as follows:

§ 52.720 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Illinois Nonregulatory and Quasi-Regulatory Provisions

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements				

[338] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* *	*	*	* *	* *
2015 Ozone NAAQS Infrastructure Requirements.	Statewide ...	5/16/2019 and 9/22/2020.	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) Prongs 1, 2, which are disapproved, and no action has been taken on (D)(i)(II) Prong 4.

Subpart P—Indiana

■ 7. Section 52.770 is amended in the table in paragraph (e) by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS'' after the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS.	11/2/2018	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	All CAA infrastructure elements have been approved except (D)(i)(I) Prongs 1 and 2, which are disapproved, and no action has been taken on the visibility portion of (D)(i)(II).
* *	*	*	* * *

Subpart S—Kentucky

■ 8. Section 52.930 is amended by adding paragraph (n) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(n) *Disapproval.* The state implementation plan (SIP) revision submitted on January 11, 2019, addressing Clean Air Act section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2015 ozone national ambient air quality standards (NAAQS) is disapproved.

Subpart T—Louisiana

■ 9. Section 52.996 is amended by adding paragraph (b) to read as follows:

§ 52.996 Disapprovals.

* * * * *

(b) The SIP submittal from November 13, 2019, addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS is disapproved.

Subpart V—Maryland

■ 10. Section 52.1076 is amended by adding paragraph (gg) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(gg) *Disapproval.* EPA is disapproving Maryland's October 16, 2019, State Implementation Plan (SIP) revision intended to address the Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 8-hour ozone national ambient air quality standard (NAAQS).

Subpart X—Michigan

■ 11. Section 52.1170 is amended in the table in paragraph (e), under the heading ''Infrastructure,'' by revising the entry for ''Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* *	*	*	* *	* *
Infrastructure				

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* *	*	* *	*	* *
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS.	Statewide ...	3/8/2019	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	*Approved CAA elements:* 110(a)(2)(A), (B), (C), (D)(i)(II) Prong 3, D(ii), (E)(i), (F), (G), (H), (J), (K), (L), and (M). *Disapproved CAA elements:* 110(a)(2)(D)(i)(I) Prongs 1 and 2, and 110(a)(2)(D)(i)(II) Prong 4. No action on CAA element 110(1)(2)(E)(ii).
* *	*	* *	*	* *

Subpart Y—Minnesota

■ 12. Section 52.1220 is amended in the table in paragraph (e) by revising the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approved date	Comments
* *	*	* *	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS.	Statewide ...	10/1/2018	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	Fully approved for all CAA elements except transport elements of (D)(i)(I) Prong 2, which are disapproved, and no action has been taken on the visibility protection requirements of (D)(i)(II).

Subpart Z—Mississippi

■ 13. Section 52.1273 is amended by adding paragraph (b) read as follows:

§ 52.1273 Control strategy: Ozone.

* * * * *

(b) *Disapproval.* The state implementation plan (SIP) revision submitted on September 3, 2019, addressing Clean Air Act section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2015 ozone national ambient air quality standards (NAAQS) is disapproved.

Subpart AA—Missouri

■ 14. Section 52.1323 is amended by adding paragraph (p) to read as follows:

§ 52.1323 Approval status.

* * * * *

(p) For the 2015 8-hour ozone NAAQS:

(1) *Disapproval.* Missouri state implementation plan (SIP) revision submitted on June 10, 2019, to address the Clean Air Act (CAA) infrastructure requirements of section 110(a)(2) for the 2015 8-hour ozone NAAQS, is disapproved for section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

(2) [Reserved]

Subpart DD—Nevada

■ 15. Section 52.1472 is amended by adding paragraph (k) to read as follows:

§ 52.1472 Approval status.

* * * * *

(k) *2015 8-hour ozone NAAQS.* The SIP submittal from October 1, 2018, is disapproved for Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the NDEP, Clark County, and Washoe County portions of the Nevada SIP submission.

Subpart FF—New Jersey

■ 16. Section 52.1586 is amended by adding paragraph (c) and reserved paragraph (d) to read as follows:

§ 52.1586 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) *2015 8-hour ozone NAAQS*—(1) *Disapproval.* New Jersey SIP revision submitted on May 13, 2019, to address the CAA infrastructure requirements of section 110(a)(2) for the 2015 8-hour ozone NAAQS, is disapproved for section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

(2) [Reserved]

(d) [Reserved]

Subpart HH—New York

■ 17. Section 52.1683 is amended by adding paragraph (v) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(v) *Disapproval.* The portion of the SIP revision submitted on September 25, 2018, addressing Clean Air Act section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2015 ozone NAAQS is disapproved.

Subpart KK—Ohio

■ 18. Section 52.1870 is amended in the table in paragraph (e), under ''Infrastructure Requirements,'' by revising the entry for ''Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographic or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Infrastructure Requirements				
*	*	*	*	*
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS.	Statewide ...	9/28/2018	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prongs 3 and 4, (E), (F), (G), (H), (J), (K), (L), and (M). Elements (D)(i)(I) prongs 1 and 2 are disapproved.
*	*	*	*	*

Subpart LL—Oklahoma

■ 19. Section 52.1922 is amended by adding paragraph (c) to read as follows:

§ 52.1922 Approval status.

* * * * *

(c) The portion of the SIP submittal from October 25, 2018, addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2015 ozone national ambient air quality standards (NAAQS) is disapproved.

Subpart SS—Texas

■ 20. Section 52.2275 is amended by:

■ a. Removing the first paragraph (m); and

■ b. Adding paragraph (o).

The addition reads as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(o) *Disapproval.* The portion of the SIP submittal from September 12, 2018, addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS is disapproved.

Subpart XX—West Virginia

■ 21. Section 52.2520 is amended in the table in paragraph (e) by adding the entry ''Section 110(a)(2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	Statewide ...	2/4/2019	2/13/2023, [INSERT **FEDERAL REGISTER** CITATION].	Disapproval—EPA is disapproving West Virginia's February 4, 2019, State Implementation Plan (SIP) revision intended to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 8-hour ozone national ambient air quality standard (NAAQS).

Subpart YY—Wisconsin

■ 22. Section 52.2591 is amended by adding paragraph (l) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(l) *Partial approval/disapproval.* In a September 14, 2018, submission, WDNR certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2015 ozone NAAQS. For section 110(a)(2)(D)(i)(I), prong 1 is approved and prong 2 is disapproved. EPA did not take action on any other elements. We will address the remaining requirements in a separate action.

[FR Doc. 2023–02407 Filed 2–10–23; 8:45 am]

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LIST OF PUBLIC LAWS

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